

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





75-7502

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANDY DENNO individually and on behalf of the members of the National Maritime Union of America.

Plaintiff.

-against-

SHANNON J. WALL, as President of the National Maritime Union of America and individually, JOSEPH CURRAN, as past President of the National Maritime Union of America and individually, HERB DAREVIC, as Secretary-Treasurer of the National Maritime Union of America and individually, PETER LOCKER, JAMES MARTIN and RICK MILLER, as Vice Presidents of the National Maritime Union of America and individually, ANDREW BECK, as New York Branch Agent of the National Maritime Union of America, ABRAHAM B. FREEMAN, LEON KARCIMBER and MARTIN E. SERAL, as former Trustees of the National Maritime Union Officers' Pension Plan and individually, and The AMALGAMATED BANK OF NEW YORK, as Successor Trustee of the National Maritime Union Officers' Pension Plan and Trustee for the National Maritime Union Staff Pension Plan.

Defendants.

Plaintiff/Appellant's Appendix

PAGINATION AS IN ORIGINAL COPY



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANDY DINKO individually and on behalf of the members of the National Maritime Union of America.

Plaintiff.

75 Civ. 524 (HFW)

-against-

SHANNON J. WALL, as President of the National Maritime Union of America and individually, JOSEPH CURRAN, as past President of the National Maritime Union of America and individually, MEL BARISIC, as Secretary-Treasurer of the National Maritime Union of America and individually, PETER BOCKER, JAMES MARTIN and RICK MILLER, as Vice Presidents of the National Maritime Union of America and individually, ANDREW RICK, as New York Branch Agent of the National Maritime Union of America, ABRAHAM E. FREEDMAN, LEON KARCHMER and MARTIN E. SEGAL, as former Trustees of the National Maritime Union Officers' Pension Plan and individually, and The AMALGAMATED BANK OF NEW YORK, as Successor Trustee of the National Maritime Union Officers' Pension Plan and Trustee for the National Maritime Union Staff Pension Plan.

NOTICE OF APPEAL

Defendants.

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Notice is hereby given that ANDY DINKO, individually and on behalf of the members of the National Maritime Union of America, Plaintiff above-named, hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment dismissing the complaint on the ground that the Court lacks jurisdiction over the subject matter of the action, entered in this action on the 13th day of August, 1975.

Dated: New York, New York  
August 20, 1975

MELVIN E. ROSENTHAL, ESQ.  
Attorney for Plaintiff  
277 Broadway  
New York, New York 10007





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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In the Matter of the Application of  
ANDY DINKO, the Proposed Plaintiff,  
for Leave to Bring an Action in the  
Following Manner:

ANDY DINKO individually and on behalf  
of the members of the National Mari-  
time Union of America,

Plaintiff,

-against-

SHANNON J. WALL, as President of the  
National Maritime Union of America  
and individually, JOSEPH CURRAN, as  
past President of the National Mari-  
time Union of America and individually,  
MEL BARISIC, as Secretary-Treasurer of  
the National Maritime Union of America  
and individually, PETER BOCKER, JAMES  
MARTIN and RICK MILLER, as Vice Presidents  
of the National Maritime Union of America  
and individually, ANDREW RICH, as New  
York Branch Agent of the National Mari-  
time Union of America, ABRAHAM E. FREEDMAN,  
LEON KARCHMER and MARTIN E. SEGAL, as for-  
mer Trustees of the National Maritime  
Union Officers' Pension Plan and individ-  
ually, and The AMALGAMATED BANK OF NEW  
YORK, as Successor Trustee of the National  
Maritime Union Officers' Pension Plan and  
Trustee for the National Maritime Union  
Staff Pension Plan.

Defendants.

VERIFIED  
APPLICATION

-----x  
PROPOSED PLAINTIFF'S APPLICATION FOR PERMISSION  
TO BRING AN ACTION PURSUANT TO SECTION 501  
OF TITLE 29 OF THE UNITED STATES CODE AND FOR  
RELIEF UNDER SECTIONS 411 AND 431 OF TITLE 29,  
U.S.C., AND COMMON LAW ON BEHALF OF THE MEMBERS  
OF THE NMU

The proposed plaintiff seeks permission to institute  
this proceeding against the above named officers, agents, repre-  
sentatives and trustees of the National Maritime Union of America

A



(hereinafter referred to as the "NMU") pursuant to Title 29, United States Code, Section 501, and seeks relief under other Sections of the Labor Management Reporting and Disclosure Act (hereinafter referred to as the "LMRDA") and under common law principles.

The facts upon which this proposed action is based are set forth both in the Verified Application and in the affidavit of Andy Dinko, sworn to on the 22 day of January, 1975, in support of this application pursuant to 29 U.S.C. §501, and will be repeated herein only to the extent necessary to intelligently coordinate the facts with the applicable law.

#### The Applicable Law

A. Section 501(a) of the LMRDA, 29 U.S.C. §501(a), imposes a fiduciary obligation on the officers, agents, shop stewards and other representatives of a labor organization to hold its money and property solely for the benefit of the organization and its members and to manage, invest and expend this money and property in accordance with the organization's constitution and by-laws. That section provides in its entirety:

"(a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the



governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and by-laws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy."

Section 501(b) of the Act affords a vehicle for Union members to bring an action against their officers or representatives who have allegedly violated the fiduciary obligation created by Section 501(a), and provides as follows:

"(b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may

be made ex parte. ..."

B. Title 29, United States Code, Section 431(a) directs every labor organization to file a report with the Secretary of Labor detailing Union provisions made and procedures followed for the authorization for disbursement of funds and the audit of financial transactions of the labor organization.

Section 431(b) requires every labor organization to file annually with the Secretary of Labor a complete report of its financial condition and operations, including its liabilities, and direct or indirect disbursements (including reimbursed expenses to officers). Section 431(c) of the Act requires that such reports, or the information required to be contained in such reports, be made available to all Union members. That section provides in pertinent part:

"(c) Every labor organization required to submit a report under this subchapter shall make available the information required to be contained in such report to all of its members, and every such labor organization and its officers shall be under a duty enforceable at the suit of any member of such organization in any State court of competent jurisdiction or in the district court of the United States for the district in which such labor organization maintains its principal office, to permit such member for just cause to examine any books, records, and accounts necessary to verify such report. ..."

C. Section 411(a) (2) of Title 29, United States Code, gives union members the right to freedom of speech to ex-



press their views upon any business properly before a labor organization meeting, subject only to established and reasonable rules pertaining to the conduct of such meetings. Section 412 of the Act permits any person whose rights, secured by Section 411, have been infringed to "bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate."

D. Title 29, United States Code, Section 401, provides in appropriate part:

"401. Congressional declaration of findings, purposes, and policy

(a) The Congress finds that, in the public interest, it continues be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection; that the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation; and that in order to accomplish the objective of a free flow of commerce it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.

(b) The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and

the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives."

### The Proposed Action

The proposed plaintiff, Andy Dinko, a rank and file member, in good standing, of the NMU for more than 30 years, seeks permission to bring an action for the benefit of the NMU and on behalf of its members:

1). For an Order setting aside and declaring void the NMU Staff Pension Plan and its Declaration of Trust, which revised and replaced the NMU Officers Pension Plan and its Trust Agreement;

2). For injunctive relief restraining and prohibiting the defendants from making any payments or expenditures pursuant to or under the NMU Staff Pension Plan and the Declaration of Trust;

3). For an independent examination of the NMU's books, records and accounts necessary to verify Union reports under Section 431; an accounting, by Court appointment, of the NMU, its general fund, the NMU Officers Pension Plan and the NMU Staff Pension Plan, and of all monies paid by the NMU, its general fund and the NMU Officers Pension Plan to the NMU Staff Pension Plan;

4). For an independent accounting of all monies improperly and wrongfully paid pursuant to the NMU Staff Pension Plan to any and all officers and employees of the Union;



5). For an Order establishing a membership Watch Dog Committee to supervise the expenditure of NMU funds, under Court direction and supervision, in order to protect the membership from a continuing misappropriation of Union funds;

6). For an Order providing for an inspection and copying of the NMU's complete membership lists;

7). To recover damages.

Basis for Proposed Action

The bases for the plaintiff's proposed action are these:

1) The invalid, inaccurate, incomplete and deceptive "spread" given to the proposed revision of the NMU Officers Pension Plan and its Trust Agreement, which appeared in the NMU Pilot, vol. 39, No. 11, November, 1974 (annexed hereto and made a part hereof, as Exhibit I);

2) The failure and refusal of the defendants to make available for inspection by plaintiff and other union members in good standing the full and complete text of the proposed NMU Staff Pension Plan and the NMU Officers Pension Plan, in all NMU branch offices during regular Union office hours;

3) The failure of the defendants to make available to union members in good standing for inspection the full and complete text in Spanish of the proposed NMU Staff Pension Plan and the NMU Officers Pension Plan in all NMU branch offices during regular Union office hours;

4) The failure of the defendants to make available to plaintiff and other union members in good standing an independent financial report or other adequate financial information on the NMU Officers Pension Plan and the NMU Staff Pension Plan either through publication in the Pilot or at all NMU branch offices;

5) The failure of the defendants to permit plaintiff and other Union members in good standing an opportunity to express their views on the proposed revision of the NMU Officers Pension Plan and its Trust Agreement at the regular branch meeting of the Union in New York, called expressly for that purpose, on Monday, November 25, 1974;

6) A continuing and pervasive misappropriation of NMU funds by NMU officers and staff; a breach of the fiduciary obligations imposed upon Union officers and other representatives by 29 U.S.C. §501; and a failure to make available to Union members in good standing information respecting the NMU's true and complete liabilities and disbursements.

More specifically:

1) Article 4 of the Constitution of the NMU provides in Section 1 that all decisions of the National Council and the National Office (composed of defendants Wall, Barisic, Bocker, Martin and Miller) "which change the established policies, programs, and procedures of the Union must first be approved by the membership before they are made effective." Section 2 of Article 4 provides that such membership approval shall be obtained by "spreading in full" such decision in the NMU Pilot. The decision



shall then be read at the regular membership meeting; and, "after discussion by the membership, action upon the decision shall be taken by vote of the membership present. The approval of a majority of the total members voting in all Branches shall be required in order to make the decision operative."

Pursuant to this NMU Constitutional mandate a "Notice to all Members" was inserted in the November 1974 issue of the Pilot in English, at page 5 (see Exhibit I) and in Spanish, at page 16 (see Exhibit II). This Notice, which was entitled, "Proposal to be voted at regular Branch meeting, Monday, November 25, 1974", was misleading, inaccurate, incomplete and deceptive. It was contrary both to the letter and spirit of the NMU Constitution, which requires such a decision to be "spread in full" for, inter alia, the following reasons:

- The Notice did not state the differences between the proposed Staff Pension Plan and the Officers Pension Plan, which it was to replace.

- It did not state the basis or formula upon which the benefits to the participants were to be computed.

- It did not state such basic considerations as the amount of money to be actually allocated, and the type of benefits (lump sum payments, severance and pension payments) to be received by Union officers and staff under the proposed Plan.

- It did not indicate the total funding to be made available from the NMU General Fund for the Plan.

- Incredibly, it did not indicate the cost to each member of the benefits to be paid to Union officers and employees under the proposed Plan.

- Nor did the Notice indicate that the NMU National Office would, among other things, determine all questions relating to the eligibility of employees to become participants, and compute and certify the amount and kind of benefits payable to participants and their beneficiaries under the Plan.

The NMU Constitution requires "full" disclosure of a National Office decision to change established Union policies, programs and procedures. Such notice must be in a form understandable to the average Union member, and must include all vital points of the proposed Plan in order to allow and permit the membership to make an informed and intelligent decision on the issue of whether to approve such a decision. The Notice in the NMU Pilot failed to do this.

2) As the Affidavit of the plaintiff shows, the full text of the proposed NMU Staff Pension Plan and the NMU Officers Pension Plan, and the Declaration of Trust, were not made available for inspection and study, as indicated in the Pilot Notice, to all Union Members in the NMU branch offices.

As noted above, the so-called Notice or "description of principal changes contained in the revised plan" printed in the November Pilot failed to give to the membership a full, accurate and understandable description of the decision of the National Office. It was therefore especially incumbent upon the Union to



make available during regular Union office hours prior to the debate and vote, the full text of both Plans for analysis by any and all Union members in good standing. This, upon information and belief, was done on a selective and arbitrary basis. That is, without reason the documents were made available to certain members but not to others. Such arbitrariness is self-serving and unlawful.

3) Upon information and belief, at least fifty per cent (50%) of all NMU members are of Hispanic origin and Spanish speaking. Reflecting this fact, Article 8, Section 10(g) of the NMU Constitution provides: "Translations: The National Office may cause to be translated any part of the Pilot into whatever language it may deem necessary in order that the membership may be better informed." Pursuant thereto, and in accordance with NMU custom and practice, the Pilot printed the November Notice in both the English and Spanish languages. Nevertheless, the NMU failed to provide, for inspection and study, the full text of the two Pension Plans and Trust Agreements in the Spanish language. The result was to effectively deprive a majority of Union members of the opportunity, as the NMU Constitution notes, to better inform themselves of the true meaning and significance of the National Office decision which they were called upon to ratify. In light of the incomplete and misleading Notice, which the National Office choose to have published in Spanish in the Pilot, it was particularly incumbent upon the defendants to permit the Hispanic membership the opportunity to accurately inform themselves of the true meaning and significance to them of the pensions to be awarded, at their expense, to Union officers and staff.

4) It has been the custom and practice of the NMU,

upon information and belief, to provide the membership with the facts and figures relative to all accountings and financial reports of Union welfare and pension plans via their publication in the Pilot. However, never in the history of the NMU's Officers Pension Plan or its new Staff Pension Plan has an accounting or financial report on such Plans been published in the Pilot or made available to Union members, nor has any Union member had access to even such basic information on the financial breakdowns of the Plans as: how much money such Plans cost each member of the NMU; how much money has been allocated to the Plans; and the true and complete Union obligation to each officer and employee pursuant to these Plans.

5) As shown in the Affidavit of plaintiff, and as can be clearly seen in Exhibit III (annexed hereto and made a part hereof) - the pertinent portion of the minutes of the Regular Membership meeting held in New York on November 25, 1974 - plaintiff's and other Union members' rights under Section 411 of Title 49, U.S.C., were violated by the defendants.

At first the Chairman of that meeting, the defendant Rich, attempted to push the proposal through without any debate or discussion. He quickly reversed himself and seemingly opened debate. But after a minimum of comments, which included a statement as to the lack of understanding of the "spread" on the Plan which appeared in the Pilot, the Chairman launched into a long discourse on the merits of the proposal and membership loyalty, which dominated more than half the so-called discussion. At the close of the Chairman's speech, in favor of the proposed Staff Pension Plan, debate and discussion were closed and the vote taken.

A reading of Exhibit III together with the aforementioned Affidavit, will make obvious defendant's failure to afford



Union members their rights, under Section 411, to express their views on matters properly before a labor organization meeting. While deference must be given to established and reasonable Union rules pertaining to the conduct of meetings, surely the importance of the proposal presented for membership approval and the letter and spirit of Section 411 demanded something other than the shabby "railroading" by the defendant Rich.

6) A recital of the above clearly spells out the defendants breach of their fiduciary duty under Section 501 to hold the Union's money and property solely for the benefit of the organization and its members and to manage, invest and expend the same in accordance with its constitution and bylaws.

But in addition to the above, upon information and belief:

A) The defendants have executed, without membership knowledge, authorization or ratification, written contracts to guarantee pension and severance pay from the NMU General Treasury in the event of a declaration of invalidity of Union Plans to the following non-member NMU employees:

- a. Mr. Ernest Olson, Building Manager
- b. Mr. Milton Bright, Controller
- c. Mr. Bernie Raskin, Public Relations Director
- d. Mr. N. Diamond, Executive Secretary
- e. Mr. Eugene Spector, Research Director

Such contracts represent a potential Union liability. Nevertheless, Union members have never been informed of the fact

or even existence of these liabilities by any Union source, including the Pilot.

B) The defendants, without authorization or membership ratification, have taken men elected to one Union office and appointed them to different positions in order to pay them two and three times the salaries of the office to which they were elected. For example, Mr. Elwood Hampton, elected a Patrolman, has been made, by appointment, a Regional Director. Defendant Andrew Rich was elected Port Agent in New York and has been appointed to Regional Director.

C) Officers have been given excessive travel and expense allowances without any itemized report or accounting to the membership.

D) Officers and staff members have been given unauthorized salary increases without membership knowledge or approval.

E) Miscellaneous, out of pocket expenses are reimbursed from Union cash "shlush funds" without officer approval or authorization, and without itemization or accounting procedures. There are no minutes of such payments and no records. Nor are the provisos of Section 431 complied with.

7) An inspection and copying of the NMU's complete membership lists is necessary in order to inform the members of the NMU, on whose behalf this action is proposed, of the facts of such suit and the relief sought therein. Plaintiff has been denied access to such lists after repeated demands therefor, and without a Court Order, will be unable to contact the class on whose



behalf this application is made.

8) The defendants NMU Officers failed to inform the membership of the fact that over 80% of all Union funds are on deposit, at the will of such officers, in the Amalgamated Bank of New York, chosen by such officers as successor Trustee of the NMU Officers Pension Plan and Trustee for the NMU Staff Pension Plan.

9) Lastly, upon information and belief, shore-side NMU members in the Panama Canal Zone and in Puerto Rico, comprising the Industrial, Technical and Professional Government Employees Division of the NMU, who according to Article 5, Section 6 of the NMU Constitution "shall have equal rights and privileges within the NMU...to vote in elections...of the Union", were denied by defendants the opportunity to participate in and vote on the proposed NMU Staff Pension Plan.

#### Conclusion

The proposed plaintiff should be granted permission to institute suit against the proposed defendants hereinabove named in their individual and representative capacities for the breaches of their fiduciary duties under Title 29, U.S.C. 501, and under Sections 411, 412 and 431 of that Title, and under the common law principles relating thereto:

1. For an Order setting aside and declaring void the NMU Staff Pension Plan and its Declaration of Trust, which revised and replaced the NMU Officers Pension Plan and its Trust Agreement;

2. For injunctive relief restraining and prohibiting the defendants from making any payments or expenditures pursuant to or under the NMU Staff Pension Plan and the Declaration of Trust;

3. For an independent examination of the NMU's books, records and accounts necessary to verify Union reports under Section 431; an accounting, by Court appointment, of the NMU, its general fund, the NMU Officers Pension Plan and the NMU Staff Pension Plan, and of all monies paid by the NMU, its general fund and the NMU Officers Pension Plan to the NMU Staff Pension Plan;

4. For an independent accounting of all monies improperly and wrongfully paid pursuant to the NMU Staff Pension Plan to any and all officers and employees of the Union;

5. For an Order establishing a membership Watch Dog Committee to supervise the expenditure of NMU funds, under Court direction and supervision, in order to protect the membership from a continuing misappropriation of Union funds;

6. For an Order providing for an inspection and copying of the NMU's complete membership lists;

7. To recover damages.

Dated: January 22nd, 1975  
Brooklyn, New York

HAROLD B. FONER  
IRA LEITEL, of Counsel  
Attorneys for Plaintiff  
188 Montague Street  
Brooklyn, N.Y. 11201  
Tel. No. 624-5775



State of New York,  
County of Kings, SS.:

Andy Dinko, being duly sworn, deposes and says that he is the proposed plaintiff in the above-entitled application; that he has read the foregoing application and knows the contents thereof, that the same is true of his own knowledge; except as to the matters therein stated on information and belief, and that as to those matters deponent believes it to be true.

---

ANDY DINKO  
Proposed Plaintiff

Sworn to before me  
this 22nd day of January, 1975.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
In the Matter of the Application of  
ANDY DINKO, the Proposed Plaintiff,  
for Leave to Bring an Action in the  
Following Manner:  
ANDY DINKO individually and on behalf  
of the members of the National Mari-  
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Plaintiff,

-against-

SHANNON J. WALL, as President of the  
National Maritime Union of America  
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ually, and The AMALGAMATED BANK OF NEW  
YORK, as Successor Trustee of the National  
Maritime Union Officers' Pension Plan and  
Trustee for the National Maritime Union  
Staff Pension Plan.

Defendants.

Affidavit in  
Support of  
Application for  
Leave to Bring  
an Action

STATE OF NEW YORK,  
COUNTY OF KINGS,                      SS.:

ANDY DINKO, being duly sworn, deposes and says:

1. I am a member in good standing for more than 30 years of the  
National Maritime Union of America (hereinafter referred to as



the "NMU") and make this Affidavit in support of an application under 29 U.S.C. §411, 412 and 431 and pursuant to 29 U.S.C. §501 of the Labor-Management Reporting and Disclosure Act for leave of the Court to commence a proceeding to set aside, as void, the NMU Staff Pension Plan, to secure an accounting, damages, and to obtain injunctive and other appropriate relief, as more specifically set forth in the Verified Application, from the defendants, all of whom are officers, agents or representatives of NMU or Trustees of the NMU Staff Pension Plan.

2. On Friday, November 15, 1974, after studying the November issue of the NMU Pilot, I went to the principal NMU office in New York, which happens to be the NMU National Headquarters located at 346 West 17th Street, New York, N.Y. 10011, during regular Union office hours, in order to inspect the full text of the proposed NMU Staff Pension Plan as well as the NMU Officers Pension Plan, and the Declaration of Trust.

I sought the opportunity to examine and study the full texts of the Plans because the Notice to all members published in the Pilot was unclear, misleading and incomplete.

I asked to see defendant Rich or defendant Wall, but was told that they were out of town and not available. I asked another Union Officer, Patrolman Sinclair Paris, for the opportunity to inspect the full texts of the pension plans, but he replied that it would not be made available to me without defendant Rich's authorization.

The following week I returned to the NMU office and asked for the defendant Rich or Al Zeidel, a Union Patrolman.

This time Rich was there, but when I requested the opportunity to examine the texts he told me that I wasn't welcome in the office and that he wasn't going to show me anything.

3. During that same week, Mr. Evaristo Rodriquez, an NMU member in good standing for over 17 years, who resides on South 9th Street, Brooklyn, New York, came to my home to tell me that he had gone to the New York NMU office as well to inspect the Plans' full text in Spanish in order to inform himself of the true meaning of the proposed Staff Pension Plan. He complained, however, that he had received the same treatment that I had, that there was no text in Spanish and that they would not let him examine anything relating to the proposed Plan.

4. Additionally, Mr. Frank Arnold, a NMU member in good standing for more than 20 years, who resides at 261 W. 114th Street, New York, New York, reported to me that he went to the NMU branch office in Baltimore, Maryland to inspect the full texts of the Pension Plans. But as in New York, the texts were not made available for inspection by Union members.

5. Such NMU officer treatment of the membership is nothing new. I have on many, many occasions requested of the defendant Barisic the opportunity to inspect or examine a Union accounting or financial reports, or the information upon which such reports are made, or NMU liabilities, direct or indirect disbursements, including reimbursed expenses to officers, and the NMU financial condition and operations. The reply has always been in the negative; and I am always told that I'll get to see only what the defendants choose to print in the Pilot, and nothing else.



Similarly, Mr. Emmanuel Van Eckelen, an active NMU member in good standing for over 18 years, who resides at 97-05 Horace Harding Expressway, Queens, New York, reported to me that he went to the NMU branch office in Philadelphia, Pennsylvania prior to the November 25th vote on the proposed Staff Pension Plan. His request for an opportunity to inspect the full texts of the Pension Plans was also denied.

6. Just prior to the commencement of the November 25th meeting, I spoke to the defendant Rich and expressed my desire to speak on the proposed Staff Pension Plan during the debate. He replied by telling me that he didn't have to let me speak, and if he didn't want to let me, I wouldn't be able to.

During the meeting itself, I personally approached the defendant Wall and complained about not being given the opportunity to inspect the texts of the Pension Plans prior to the debate and vote. I asked if he could see to it that I had such an opportunity. He replied by saying that I wasn't going to see anything, just like I wasn't going to be able to voice my opinions or views at the meeting.

Although many members, including myself, sought an opportunity during the so-called debate to express their views on the proposed Staff Pension Plan we were, without reason or cause denied all opportunity to express our views.

7. On December 17, 1974 I sent by registered mail the original of a letter annexed hereto and made a part hereof as Exhibit IV. Therein, I requested of the Union officers the relief which I now seek in the proposed action. As is typical of the defendants regard for the membership, up until and including this date, no

response whatsoever has been received to my requests and no action has been taken with respect thereto.

For that reason I am forced to turn to the Courts in an attempt to secure for the benefit of the NMU the appropriate relief herein.

ANDY DINKO

Sworn to before me  
this 22nd day of January, 1975.



# **Proposal to be voted at regular Branch meetings, Monday, November 25, 1974**

At the regular November meetings in all branches, a proposed revision of the NMU Officers Pension Plan and its Trust Agreement will be submitted to the membership. The revised plan will be called the NMU Staff Pension Plan and it will cover officers of the Union and those employees of the Union whose employment is not otherwise covered by NMU for pension purposes.

Below is a description of principal changes contained in the revised plan. Full text of the proposed NMU Staff Pension Plan as well as the present NMU Officers Pension Plan, which it will replace, and the Declaration of Trust will be available for inspection in all NMU branch offices during regular Union office hours through the month of November.

The November meetings will be held Monday, Nov. 25, 1974 in all branches.

## **Background Information**

The NMU Officers Pension Plan has been in effect since 1953. Prior to a 1969 court decision, it covered the officials and certain employees of NMU who were not covered under collective bargaining agreements between NMU and unions representing our employees.

In 1969, a Federal court judge ruled that non-officer employees of the Union could not be covered for pension under the NMU Officers Plan because of the wording of the NMU Constitution. The court did not rule that these non-officer employees could not receive the same pension protection provided by the Officers Plan; only that the Constitution at that time did not permit this coverage to be provided under the Officers Plan.

As a result of this ruling, funds which had been paid into the Officers Pension Plan to provide pensions for non-officer employees were returned to the Union's General Fund. An NMU Non-officer Staff Pension Plan subsequently was

established to provide pension coverage for those non-officer employees who had been in the NMU Officers Plan and were continuing in the Union's employ. However, no trust fund to provide these benefits was established.

In 1972, the NMU Constitution was amended (Article 8, Sec. 11a) to make clear that the Union could provide pensions for non-officer employees and could combine the plans for providing pension and welfare benefits to employees with similar plans for providing such benefits to officers.

The proposed NMU Staff Pension Plan, in accordance with the 1972 amendment to the Constitution, will combine into a single plan, the pension coverage which now is provided separately for NMU officers and non-officers. It will provide the funding now required by law and promote administrative efficiency.

The Amalgamated Bank of New York will be substituted as the trustee for the plan in place of the three individual trustees now serving the NMU Officers Pension Plan.

Following is a summary of principal differences between the proposed NMU Staff Pension Plan and the present Officers Pension Plan (full text of both plans available in branch offices):

**COVERAGE:** A single integrated plan will be established covering elected NMU officials and those non-officer employees whose employment with NMU is not covered for pension purposes by collective bargaining agreements between NMU and any union representing the Union's employees.

**FUNDING:** The funds currently in the NMU Officers Pension Trust will be transferred to the new NMU Staff Pension Plan. The actuaries then will determine how much will be required to

bring the trust to the level adequate to fund accumulated service credits of the officer and non-officer employees who will be covered. The additional funds required will come from the General Fund. As a result of the 1969 court ruling, approximately \$520,000, contributed over the years to provide pensions for non-officer employees, was taken out of the Officers Pension Plan and transferred to the NMU General Fund. Of that amount, it is estimated that about \$350,000 will now be used to fund the NMU Staff Employees Pension Plan.

**COSTS:** The proposed plan provides for the rate of contributions to be determined by the Plan actuaries but not to exceed the 26% of base pay now in effect under the NMU Officers Plan. The costs will be reviewed at least once every five years and the rate will be adjusted on the basis of the actuarial experience. In no case can the rate be higher than the current 26%. Contributions will be made for officers and non-officers covered under the plan.

**BENEFITS:** The proposed plan will have a revised benefit formula to be computed on the basis of earnings in the best five of the last ten years of employment instead of all service since 1963. This revision was approved by the membership in May, 1972. This revision will not increase any pensions already awarded. It applies only to officers and covered employees in the Union's employ now or in the future.

**ADMINISTRATION:** Under the proposed plan, the NMU National Office will function as a Pension Committee and be responsible for basic policy determinations subject to membership approval where required by the NMU Constitution. The Amalgamated Bank of N.Y. will be trustee and serve as investment advisor. The Plan will be registered with all applicable regulatory agencies of the New York and Federal governments.

## **Proposición que será votada en reunión regular de los ramales, el 25 de Noviembre, 1974.**

En la reunión regular de Noviembre en todos los ramales se presentará a la consideración de los afiliados una proposición de revisión del Plan de Pensión de Oficiales de la NMU y su Acuerdo de Administración. El plan revisado será denominado el Plan de Pensión del Personal de la NMU y cubrirá a los oficiales de la Unión y a aquellos empleados de la Unión cuyo empleo no está cubierto en otra forma por la NMU a los efectos de pensión.

Más abajo se hace una descripción de los cambios principales contenidos en el plan revisado. El texto completo del propuesto Plan de Pensión del Personal de la NMU así como del actual Plan de Pensión de Oficiales de la NMU que habrá de reemplazar, y la Declaración de Administración, estarán disponibles para inspección en todas las oficinas de los ramales de la NMU durante las horas regulares de oficina de la Unión durante el mes de Noviembre.

La reunión de Noviembre se celebrará el Lunes, 25 de Noviembre de 1974 en todos los ramales.

### **Antecedentes**

El Plan de Pensión de Oficiales de la NMU ha estado en vigor desde 1963. Antes de una decisión judicial de 1963, cubría a los oficiales y aquellos empleados que no estaban cubiertos bajo acuerdos de negociación colectiva entre la NMU y las uniones que representan a nuestros empleados.

En 1963 un juez de una corte federal dictaminó que los empleados que no eran oficiales de la Unión no podían estar cubiertos para pensión bajo el Plan de Oficiales de la NMU debido al vocabulario de la Constitución de la NMU. La corte no dictaminó que esos empleados, no-oficiales—no podían recibir la misma protección de pensión provista por el Plan de Oficiales; sólo que la Constitución no especificaba que esa protección podía ser suministrada bajo el Plan de Oficiales.

Como resultado de esa decisión, los fondos que habían sido pagados al Plan de Pensión de Oficiales para proveer pensiones a los empleados no-

oficiales fueron devueltos al Fondo General de la Unión. Subsecuentemente se estableció un Plan de Pensión para el personal de la NMU sin categoría de oficial, para ofrecer protección de pensión a aquellos empleados no-oficiales que habían estado en el Plan de Oficiales de la NMU y que seguían empleados por la Unión. Sin embargo, no se estableció un fondo administrativo para proveer esos beneficios.

En 1972, la Constitución de la NMU fue enmendada (Artículo 8, Sec. 11a) para aclarar que la Unión podría proveer pensiones para los empleados no-oficiales y podría combinar los planes para proveer pensiones y beneficios de asistencia a los empleados con los planes similares para proveer tales beneficios a los oficiales.

El propuesto Plan de Pensión del Personal de la NMU, de acuerdo con la enmienda de la Constitución de 1972, combinará en un sólo plan la cobertura de pensión que ahora se ofrece separada, una para los oficiales y los no-oficiales de la NMU. Proveerá los fondos requeridos ahora por la ley y promoverá la eficiencia administrativa.

El Amalgamated Bank of New York será sustituido por los tres administradores individuales que ahora sirven al Plan de Pensión de Oficiales de la NMU.

A continuación aparece un resumen de las principales diferencias entre el propuesto Plan de Pensión del Personal de la NMU y el actual Plan de Pensión de Oficiales (los textos completos de ambos planes están disponibles en las oficinas de los ramales):

**COBERTURA:** Será establecida un plan sencillo integrado cubriendo a los oficiales electos de la NMU y a aquellos empleados que no son oficiales cuyo empleo con la NMU no está cubierto a los efectos de pensiones por acuerdos de negociación colectivos con la Local 153 de la Unión Internacional de Empleados de Oficina u otras uniones.

**FONDOS:** Los fondos que hay actualmente en la Administración de Pensión de Oficiales de la

NMU serán transferidos al nuevo Plan de Pensión del Personal de la NMU. Los actuarios entonces determinarán cuánto se requerirá para llevar a la administración al nivel adecuado para costear los créditos de servicio acumulado de los oficiales y empleados no-oficiales que serán cubiertos. Los fondos adicionales requeridos procederán del Fondo General. Como resultado de la decisión judicial de 1963, aproximadamente \$520,000, contribuido a través de los años para proveer pensiones para los empleados no-oficiales, fueron extraídos del Plan de Pensión de Oficiales y transferidos al Fondo General de la NMU. De esa cantidad, se estima que alrededor de \$250,000 serán empleados ahora para el fondo del Plan de Pensión del Personal de la NMU.

**COSTOS:** El plan propuesto provee que el índice de contribuciones sea determinado por los actuarios del Plan, pero sin exceder el 26% del pago básico en vigor actualmente, bajo el Plan de Oficiales de la NMU. Los datos serán revisados por lo menos una vez cada tres años y el índice será ajustado a base de la experiencia de los actuarios. En ningún caso el índice podrá ser más alto que el actual 26%. Las contribuciones serán hechas para oficiales y no-oficiales cubiertos bajo el plan.

**BENEFICIOS:** El plan propuesto tendrá una fórmula revisada de beneficios que se calculará a base de los ingresos en los mejores cinco de los últimos diez años de empleo, en lugar de todo el servicio desde 1963. Esta revisión fue aprobada por los afiliados en Mayo de 1972.

**ADMINISTRACIÓN:** Bajo el plan propuesto, la Oficina Nacional de la NMU funcionará como Comité de Pensión y será responsable de las determinaciones de política básica sujetas a la aprobación de los afiliados cuando fuera requerido por la Constitución de la NMU. El Amalgamated Bank of N.Y. será administrador y servirá como asesor de inversiones. El Plan será registrado ante todas las agencias regulatorias aplicables del Estado de Nueva York y el gobierno federal.



EXHIBIT III

BRANCH OF NEW YORK

REGULAR MEMBERSHIP MEETING

MONDAY, NOVEMBER 25, 1974

The meeting was called to order at 10:00 a.m. by Andrew Rich, New York Branch Agent, in the name of the National Maritime Union.

PROPOSED AGENDA

1. Nomination and Election of Meeting Chairman.
2. Nomination and Election of Recording Secretary.
3. Reading of Previous Meeting Minutes.
4. Agent's Report.
5. National Office Report (President, Shannon Wall.)
6. New Business
  - a) Proposal NMU Staff Pension Plan.
7. Good and Welfare.
8. Adjournment.

M/S/C To accept the Agenda as read.

M/S/C To go to the first item on the Agenda.

NOMINATION AND ELECTION OF MEETING CHAIRMAN:

ANDREW RICH, BK.#44176.....Accept  
Andy Dinko, BK.#51380.....Accept  
Al Zeidel.....Decline

M/S/C To close nominations.

VOTE:

ANDREW RICH  
157

ANDY DINKO  
25

M/S/C To accept Chairman, Andrew Rich by acclamation.

M/S/C To go to the next order of business.

NOMINATION AND ELECTION OF RECORDING SECRETARY:

AL ZEIDEL, BK.#59221.....Accept  
St. Clair Parris.....Decline  
Vic Summers.....Decline  
Andy Dinko, BK.#51380.....Accept

M/S/C To close nominations.

VOTE:

AL ZEIDEL  
170

ANDY DINKO  
26

M/S/C To accept Recording Secretary, Al Zeidel by acclamation.

M/S/C To go to the next order of business.

CHAIRMAN: "The next order of business is the reading of previous meeting minutes."

M/S/C To post the reading of previous meeting minutes.

M/S/C To go to the next order of business.

CHAIRMAN: "The next item on the Agenda is the Agent's Report, Al, will you please take the gavel."

This is the shipping report dated November 22, 1974 covering the period October 25th through November 21, 1974, submitted by John DellaVolpe, Chief Dispatcher.

people spoke. There has been a good well rounded discussion on everything within the President's Report and there were things discussed that weren't even in his report. The Chair has the discretion to close discussion when he feels that full expression of the question has been had by the membership, the assembly.

Alright, under New Business..."

FLOOR: "Noise."

CHAIRMAN: "Please, Brother, you are out of order so sit down. Brothers, may I have your attention, as noted in the Agenda the proposal to be voted on at all regular membership meetings Monday, November 25th is the NMU Staff Pension Plan. It has been spread in the Pilot. The Pilot has been available to everybody. I assume it has been read. Shall the record show that it has been spread in the Pilot and that the membership is fully aware of it without me reading it into the record."

FLOOR: "So be it."

CHAIRMAN: "Is it moved to adopt the Plan?"

FLOOR: "So moved."

CHAIRMAN: "Is there a second?"

FLOOR: "Seconded."

CHAIRMAN: "Wait a minute. That is not accurate, I am not soliciting support of the motion. This was spread in the Pilot. It is the Chairman's business to bring it to the floor. It has been moved and seconded, now there is discussion."

MAN GETS UP FROM HIS SEAT.

CHAIRMAN: "Go back to your chair. There is going to be discussion."

CHAIRMAN RECOGNIZED A SPEAKER.

AUBREY HENDY, BK.#72553: "Brothers, and Sisters, Mr. Chairmen, I rise to settle this discussion here this morning. I make a motion that we accept the proposal Staff Pension Plan as spread."

FLOOR: "Second it."

CHAIRMAN: "No, no you can't walk up to the microphone. Sit down. Alright, hold it. I want to bring to everyone's attention that this microphone is unattended. We don't want to stifle the voice of the membership but a man must get the floor in accordance with Robert's Rules. I did not try to run this proposal through on you. There seemed to have been some skepticism as to whether the motion to adopt the plan was properly presented. This brother has reaffirmed its adoption."

CHAIRMAN ADDRESSED THIS TO MAN ON THE FLOOR:

CHAIRMAN: "Wait a minute, see you have your hand up but there are other people that want to speak also. I see your books."

JONATHAN BROOKS, BK.#40949: "I would like to move to reject the proposed Officers' Pension Plan."

CHAIRMAN: "Brother, there is a question before the membership already. Another motion is just out of order."

JONATHAN BROOKS, BK.#40949: "It is not out of order to oppose a motion put on the floor and call for its rejection. Now the reason for calling for a rejection is that we have been told over and over again that this Union is in hard straights. The seamen must tighten their belts. We had to sell our Union Hall. We had to get rid of our no age pension and establish a pension at age 55. And, at the same time there is an effort to establish a pension plan for the officers. Now I believe that one of the Brothers has spoken to the point. We are not opposed to paying pensions to officers and staff in this Union but the size of the pension should definitely be tied to the size of the pension of working seamen."



In fact we believe that there should be a one pot pension plan which means that no officer in this Union receives a larger pension than the highest paid working seaman.

If this union can afford to set up an officers' pension plan therefore presumably we are not in such bad financial straights and I believe this Union is also empowered to establish or re-establish our strike fund which was liquidated to sell the building because we had no money in the pension fund."

FLOOR: "Applause." POINT OF ORDER.

CHAIRMAN: "Let me explain this, you can speak if you wish but a point of order once discussion is started is not well taken."

JOSEPH MARYKA, BK.#45167: "Lady's and Gentlemen, I want to tell you on thing we elected these members either they are for us or they are not. Either one of the two things, what is it going to be? Are they going to fight for us or not? We have to get ships and we have to get ships out. I am finished."

CHAIRMAN: "Alright."

RAYMOND STOKES, BK.#59938: "The President said we are going to get a pension that is 60 percent of our salary. The point is, where is this money coming from to get him a pension when they can't give a seaman a pension? Where are they going to get this money?"

CHAIRMAN: "Alright, you Brother."

JOHN T. HUNT, BK.#88798: "My book is fully paid up. I rise in favor of the motion to accept this proposal."

MAN MAKES COMMENT FROM THE FLOOR:

JOHN T. HUNT, BK.#88798: "What is bothering you, clean underwear? I am sure that the members realize that this proposal for Officers', Staff Plan is just to give the staff equal to the elected officials. I think it is good. It is not a complicated situation. Let's just vote in favor."

FLOOR: "Noise."

CHAIRMAN: "Jumping up and down is not going to get you the floor."

THE CHAIRMAN RECOGNIZED ANOTHER SPEAKER.

PHILIPPE ELLIS, BK.#49029: "Ladys and gentlemen, now in reference to this money I have something to bring to all your attention. I would like for all of you to listen to me closely. I was an Oiler on the Keystone State before the ship left here in Jersey, we went to Vietnam. We were told by the Patrolmen you the members that join the ship before July 31st you won't be entitled to severance pay in case they sell the ship. Ok, I stayed on there until December 15th. I had a steady job. They sold the ship in Taipei when we came back to the West Coast the Patrolman told us that we were not entitled to severance pay. Ok, I went to the other Patrolmen and they told me we were not entitled to this severance pay because the ship was sold after July 31st. Ok, nonetheless I was just a Firemen Watertender on the Gulf Pride and my roommate has an inside knowledge of what is going on. He came to me and said we applied for your severance pay because there are certain people who are getting it. So I came here to the Union Hall and went upstairs and the Lady that was in charge of the Pension and Welfare on the 9th floor, I forgot her name but any how she told me, she said, 'Mr. Ellis let me see your discharges.' I showed them to her. So they went and brought out a slip and another gentleman came and confirmed that my beef was legitimate that I was entitled to my severance pay. Now this was just one month ago. So she came to me and said never listen to any Patrolman, don't listen to anything the Patrolman might say about your severance because they no nothing absolutely nothing about pension and welfare. So they made me fill out the form. I turn opened up my big mouth and I let my buddy in on a piece of pie. So he went up stairs the next day and he filed because me and the man were on the ship at the same time. They told him that he wasn't entitled to it. So in turn about four

days later they sent me a letter. I have a letter at home telling me I am not entitled to it. They just told me a few days before that I was. Where in the hell are they getting this. All of a sudden they tell me I am not entitled to it. What is going on?"

FLOOR: "Noise."

CHAIRMAN: "No cross fire please. Take the microphone if you are going to speak."

ALTON Z. THOMPSON, BK.#50831: "Good morning Sisters and Brothers, now a question on the retirement of the officers' pension plan. How are you going to vote for."

FLOOR: "Noise."

ALTON Z. THOMPSON, BK.#50831: "I can talk loud enough for all of you to hear. How are you going to vote, by hand or by division? I suggest you all vote by division. Not by hand. Mr. President, Mr. Rich and Mr. Mel Barisic and the members I think they should get retirement like we get the seamen not like they want. It should be voted by the membership."

CHAIRMAN RECOGNIZED ANOTHER SPEAKER.

FRANCISCO AYALA, BK.#55979: "I have been a meeting member since 1946 and since I have been in NMU I have been proud of it. Now there is a motion on the floor which has to be voted for. Now I came up here to ask for a motion to close discussion."

FLOOR: "Seconded."

POINT OF ORDER.

CHAIRMAN: "What is your point of order?"

WILLIAM MEAKENS, BK.#60735: "Mr. Chairman what I am against here, what I am totally against here is that there are a majority of members here who don't understand what's going on. I don't understand what it means the way it is spread in the Pilot. Now if you tell the members what it is all about instead of saying to them read it in the Pilot. This is a trick. We have been fooled too long and too often by our so called representatives just to keep on fooling, and fooling and fooling. Once be a fool, twice be a fool but not always a fool."

CHAIRMAN: "This is not a point of order. There has been vigorous discussion. I have gone around this membership."

FLOOR: "Noise."

CHAIRMAN: "Alright, brothers let me explain this, we have gone around the membership floor and I think everybody or every group has taken a shot at it."

FLOOR: "Noise."

BROTHER JUMPING UP AND DOWN.

CHAIRMAN: "Al, assume responsibility of the gavel.

You're out of order. Sit down. I know what he wants to accomplish here. Of course, you know he is fully out of order. Well anyway brothers a lot of unkind and unpleasant things have been said. I think a lot of it need not have been said, I really do. It is obvious that some of this discussion was motivated politically. Some of the things that were said would have been better left unsaid, much better. The issue before us today is not political, it is not political at all. They want to make it political. I could retaliate in kind. I am not going to do that because, I believe that intraunion politics has its time and place during general elections and perhaps at the time of our convention but certainly not at every membership meeting. This is really only cheating you the membership. You the membership have decided who your Administration Leaders should be. So I think it is wrong for someone to try to project themselves politically here. They can't do a thing about it until



next election time.

There isn't any question that there is an officers' pension plan, none at all. There is no question because you the membership in 1953 were good enough, kind enough, and gracious enough to extend this to your officials."

FLOOR: "That is more then twenty years ago."

MEMBER QUESTIONED CHAIRS RIGHT TO DISCUSS QUESTION ON FLOOR.

CHAIRMAN: "I have the right because I turned the gavel to the Recording Secretary. I have a right to participate in debate because I pay my dues. I am not going to be disconcerted by hecklers. I am not going to be alarmed because these have been their tactics since I have been the Agent. I am going to explain something that I think needs explaining. It isn't a question that the Officers' Pension Plan is being voted on. This has been granted to your officials by you the rank and file. It has been reaffirmed and amended and in 1961 and 1964 it was amended to include staff members who work for us and Master-At-Arms alike who are not covered by any collective bargaining agreement. There is no question that we are a great trade union and we were leaders in setting up pensions for our people. From the day a man first works on an NMU ship he starts getting pension credits. But here we had twenty, or twenty-five loyal devoted people who are not covered by a Plan. So..."

FLOOR: "Noise."

CHAIRMAN: "They are not covered by collective bargaining, please."

FLOOR: "Noise."

CHAIRMAN: "They work for us and they were not covered by collective bargaining. They have given us many, many loyal years of service. And again, you the membership voted that they would be included under the umbrella of the Officer's Pension Plan. And this is so stated in our Constitution. In 1969 because of a political vendetta this was taken into court. It was challenged. I don't believe that anyone wanted to challenge everybody covered under that Plan. It was a political vendetta against one man. There was a lot of evidence presented. A lot of testimony and the case dragged on interminably. The judge in making a decision now mind you, did not say that these people who we had covered weren't entitled to a pension he didn't say that they didn't deserve a pension. He said and by definition alone that they could not be covered under the Officers' Plan because they were not officers. This was his interpretation, another Judge might have ruled differently. Dame justice is always depicted as a blindfolded woman with scales delicately balanced not knowing or seeing which way the scales are tipped. Perhaps this decision cannot be termed a miscarriage of justice. And, it is only in deference to that particular judge that I say this because it was his own brand of justice. But, of course, it was a grave injustice to people who have worked for us so long and so lovingly. But, these people who were knocked out of the Plan didn't panic. They didn't run away from us. They didn't fight us. They didn't take us into court and sue us. They did not condemn us because they realized that we were in good faith when we brought them into our Plan. That you the membership wanted them to have a Plan and solely because of definition, terminology were they stripped of benefits. It was suggested I know by outside interests, outside attorney's that these people sue the NMU. But one man said to me 'Andy, I couldn't do that because when I came to this Union it was only a job but I've grown to love NMU and love its membership and I couldn't in good conscience turn around and sue the union.' This they did not do. They said, 'I am sure that NMU will rectify the mistake that was made.' And this was done at the convention of 1972 when we established a Plan for the staff members not covered by collective bargaining. A Plan that could be merged with the Officers' Plan. That is really what it is all about. We are really only carrying out your mandate. This is what you directed us to do. And, now it is only to gain your approval of the way in which we have handled it. I am sure that no one here wanted to see a man like Carlton Connors knocked out of a pension. Carlton is one of the men who was affected. In 1962 and some of the Brothers

Here, I know Sinclair Trotman was there when I lead the crew off the Argentina at Pier 97. This man walked the picket line for the NMU. This man shed his blood on the picket line for NMU. Shall we do him out of a pension? Shall this man be done out of a pension? I think not. I don't think you want him done out of a pension."

FLOOR: "No."

CHAIRMAN: "And there are other people who are not members but staff members who have given us long, loyal years of service. They have walked picket lines. They have taken their lumps for us. Shall we do away with their pension rights?"

FLOOR: "No."

CHAIRMAN: "Of course not."

Brothers you cannot draw an analogy between the staff members' and seamen's pension plans. You cannot draw an analogy between the two. I'll tell you exactly why you can't. Remember this that pension contributions made into this plan must take care of those who went out before you, those who laid the ground work for NMU. You must take care of those people. If you didn't do that there would not be any question that active seamen would be able to retire with \$650, \$750 a thousand dollar a month pension. But you have to take care of those who went before you. And it comes to mind now a man who went out in 1957 or 1958 on \$42.00 a month is now receiving \$191.50. Now this could have only been accomplished because the contributions made in your name cover the differential between \$42.00 and \$191.50. This has always been a trade union principle of NMU. You cannot draw a comparison between the two plans because they are structured entirely different.

But as President Wall said if the membership wants something like this, it is a negotiable item and can be voted on by you the membership. Getting back to the staff members pension, we have been able to include them under the protective umbrella of the Officers' Pension Plan to be called the Staff Pension Plan at no additional cost to you the membership because it is at the same rate of contribution being presently paid. Now this has to be economically sound. I don't see how anyone can oppose this because you said to give them a plan and this is so stated in our Constitution. If it was set up separate and apart from the officers plan it would be more expensive to operate. Therefore, they are being brought under the umbrella of our Plan. Now the Plan is fairly sound, fairly well funded and I expect and know that there will be a time when I can come to you in the future and say the rate of contribution is less than before. And, someday, sometime I expect either myself or whoever is here to be able to stand before you and say that no further contributions are necessary, the Plan is 100% funded. Now I don't know how anybody can be opposed to this sound economic principle. I know there will be those opposed. They have opposed and attacked virtually everything that I have presented to this membership. A fellow said to me one time, 'Andy doesn't the constant attacking dishearten you?' It would have but it didn't because this rank and file, this great membership has at all times rallied to my side and supported me. I love them for it and because of the splendid support you have shown me there exist between us a bond, ties of faith and confidence and I will never do anything to rupture them. No I will never do anything to sever that bond and God knows I will never let anybody or any group do anything to cut the ties of this bond."

FLOOR: "Applause."

CHAIRMAN: "Yes, this is a great membership, a membership with a great big heart. I have presented this proposed plan to you and showed you the economic feasibility of adopting it. But there is another side of the question and the answer to that side will not be found in facts or figures. No it won't be found there. That side of the question must be answered from within your heart. I feel that when this membership, this great NMU membership is presented with an issue that must be decided as to what is morally right and morally wrong that you will examine your conscience and vote with your heart."

FLOOR: "Applause."



CHAIRMAN: "That's the kind of faith I have in you and I sincerely hope and pray that you will show the same faith in me that I have in you by voting for this proposed Staff Plan thus assuring that staff member, Master-At-Arms and Official alike will have a small measure of security when they retire and leave our great, good, and beloved NNU. Thank you."

FLOOR: "Applause."

Moved and seconded to close discussion."

M/S/C To close discussion.

CHAIRMAN: "We are ready to vote, all in favor of the Plan please signify by raising your right hand. Counter give your count to the Secretary."

All those opposed please raise your right hand."

CHAIRMAN ADDRESSING THOSE WHO SPOKE AGAINST THE PLAN.

CHAIRMAN: "Look around you and see the vote. Give the vote to the Secretary."

Those who have abstained from voting. Those of you who didn't vote, raise your right hand. Bring in the count."

FLOOR: "Point of order."

CHAIRMAN: "Don't yell point of order because I am going to explain point of order to you."

FLOOR: "Point of order."

CHAIRMAN: "Every once and a while I have to hold a mini-course on Robert's Rules. Now everyone thinks because you say point of order or division, that it is in order. Of course, it is not in order. Let me explain this to you. There is no point of order in order when discussion is going on and if the question before the membership is not in violation of National, State, or City Codes or our Constitution. There is no point of order in order."

Please be quiet, here is the vote.

The vote is 131 for, 47 against, 13 abstained. Hold it, we are not finished with the meeting. Put the microphone back there.

There is no motion to adjourn. I am not adjourning this meeting. Don't stamp any cards now. There isn't any shipping. We are going to complete this meeting. The meeting is still in progress.

Now I have explained the point of order. Everybody sit down. I am not going to stop the meeting. Everybody sit down."

FLOOR: "Noise."

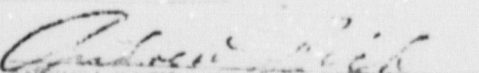
CHAIRMAN: "I am not going to recognize any motion to adjourn to satisfy someone's political motives. Now there is no point of order. I am not going to recognize you. You can stand at the microphone all day. Everybody sit down, there is still a meeting. Brothers, I am asking you to be quiet. He can jump up and yell, and yell all he wants. He and others didn't think they'd lose the vote. They didn't expect it to be won, but it was."

FLOOR: "Noise."

CHAIRMAN: "We've had a long meeting, it's nearly 12:30. There has been vigorous discussion. Is it moved to adjourn?"

FLOOR: "It is moved and seconded to adjourn."

M/S/C To adjourn. TIME: 12:25 p.m. ATTENDANCE 532

  
ANDREW RICH, CHAIRMAN  
Book Number 44176

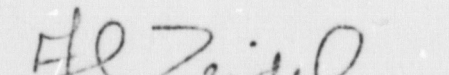
  
AL ZEIDEL, RECORDING SECY.  
Book Number 59221

EXHIBIT IV

December 17, 1974

National Maritime Union of America  
346 West 17th Street  
New York, N. Y. 10011

ATT: Mel Barisic  
Secretary-Treasurer of N.M.U.

Gentlemen:

Notice is hereby given that the regular November meeting of the Union, held on November 25, 1974, was conducted in an unconstitutional manner. Further notice is given that the vote at said meeting on the proposed revision of the National Maritime Union Officer's Pension Plan and its Trust Agreement, was invalid and unconstitutional.

The Constitution of the National Maritime Union provides that where there is a change of policy, membership approval is necessary.

The Constitution further provides that for the membership act, the change "shall be spread in full in the National Maritime Union Pilot...".

The proposed revision was not spread in full but was merely set forth in the Pilot as a description. For the membership to have adequate notice, the proposed revision must be published in the Pilot in full in both English and Spanish.

Demand is hereby made that the vote on the proposed revision be declared void. In the event the proposal is again submitted to the membership it should be published at least three (3) months prior to the meeting at which it is voted. Publication should be in English and Spanish. The meeting shall be conducted pursuant to the Constitution, allowing members their right to speak on the motion.

At the meeting of November 25, 1974, the membership was not permitted to speak on the proposed revision; all in violation of the National Maritime Union Constitution.

I, Andy Dinko, N.M.U. book number S-51380, demanded several times from the Chairman of the Meeting to speak on this proposal but refused to be recognized by the Chairman and was ordered several times to sit down and shut up. This violates my guarantee of free speech, under the Landrum Griffin Act.

I demand a complete accounting of all Union expenditures involving the officers Staff Pension Plan and all benefits associated therewith. In addition I further demand a true and accurate accounting of all Union officers



EXHIBIT IV

and staff, who are participating recipients in this plan; as well as monies expended or allocated for each individual; family benefits and health benefits. etc.

I further demand that an outside independent certified public accountant be selected to audit all expenditures of the N.M.U.; and a Membership Watch Dog Committee be set up including outside impartial observers to see that members will be protected against the continuous misappropriation of Union Funds.

I demand that no monies be used out of the N.M.U. General Treasury for the Officers Staff Pension Plan. Further, I would consider any expenditure of Union Monies for the Officers Staff Pension Plans as both illegal and unethical; and I herewith, give notice that you and all the National Officers will be held personally liable for the repayment of these funds. The Court has provided ample precedent in the case; Morrissey VS. Perry et.al.

If you do not reply within ten (10) days from the above date, I will immediately instruct my attorneys to proceed with the Law Suits in the Federal Courts.

Sincerely,

*Andy Dinko*

ANDY DINKO

N.M.U. Book No. S-51380

(Member in Good Standing)

C.C. Shannon Wall, President of N.M.U.  
U.S. Attorney Southern District of New York

U.S. Eastern District, Brooklyn, N. Y.

U.S. Attorney Newark, New Jersey

President of Amalgamated Bank - Letter sent: Registered Mail-  
of New York Return Receipt Requested

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

In the Matter of the Application of  
ANDY DINKO, the Proposed Plaintiff,  
for Leave to Bring an Action in the  
Following Manner:  
ANDY DINKO individually and on behalf  
of the members of the National Mari-  
time Union of America,

Plaintiff,

-against-

SHANNON J. WALL, as President of the  
National Maritime Union of America  
and individually, JOSEPH CURRAN, as  
past President of the National Mari-  
time Union of America and individually,  
MEL EARISIC, as Secretary-Treasurer of  
the National Maritime Union of America  
and individually, PETER BOCKER, JAMES  
MARTIN and RICK MILLER, as Vice Presidents  
of the National Maritime Union of America  
and individually, ANDREW RICH, as New  
York Branch Agent of the National Mari-  
time Union of America, ABRAHAM E. FREEDMAN,  
LEON KARCHMER and MARTIN E. SEGAL, as for-  
mer Trustees of the National Maritime  
Union Officers' Pension Plan and individ-  
ually, and The AMALGAMATED BANK OF NEW  
YORK, as Successor Trustee of the National  
Maritime Union Officers' Pension Plan and  
Trustee for the National Maritime Union  
Staff Pension Plan.

Defendants.

-----x

ORDER GRANTING  
LEAVE TO COMMENCE  
AN ACTION

On the annexed Affidavit of ANDY DINKO, the proposed  
plaintiff herein, sworn to on the 22nd day of January, 1975, the  
Verified Application, and the exhibits annexed thereto, it appears  
that money held by officers, agents or representatives of the  
National Maritime Union of America (hereinafter referred to as  
the "NMU") solely for the benefit of the organization and its  
members has been expended in violation of the NMU's constitution  
and by-laws and in contravention of Section 501(a) of Title 29  
of the United States Code; and



It further appearing that the proposed plaintiff served demand on the appropriate officers of the NMU, a labor organization, demanding that the said officers of the NMU take appropriate action on behalf of the NMU to secure an accounting, recover damages and other appropriate relief on December 17, 1974; and

It further appearing that no action has been taken as a result of the said demand within a reasonable period of time; and

It further appearing that there is a Verified Application and good cause shown,

NOW, on motion of Harold B. Foner and Ira Leitel, of Counsel, attorneys for the proposed plaintiff, it is

ORDERED that the plaintiff be and is hereby granted leave to commence a proceeding as follows:

1. For an Order setting aside and declaring void the NMU Staff Pension Plan and its Declaration of Trust, which revised and replaced the NMU Officers Pension Plan and its Trust Agreement;

2. For injunctive relief restraining and prohibiting the defendants from making any payments or expenditures pursuant to or under the NMU Staff Pension Plan and the Declaration of Trust;

3. For an independent examination of the NMU's books, records and accounts necessary to verify Union reports under Section 431; an accounting, by Court appointment, of the NMU, its general fund, the NMU Officers Pension Plan and the NMU Staff Pension Plan, and of all monies paid by the NMU, its general fund and the NMU Officers Pension Plan to the NMU Staff Pension Plan;

4. For an independent accounting of all monies improperly and wrongfully paid pursuant to the NMU Staff Pension

Plan to any and all officers and employees of the Union;

5. For an Order establishing a membership Watch Dog Committee to supervise the expenditure of NMU funds, under Court direction and supervision, in order to protect the membership from a continuing misappropriation of Union funds;

6. For an Order providing for an inspection and copying of the NMU's complete membership lists;

7. To recover damages; and

For whatever other, further and different relief the Court may deem just in the circumstances including but not limited to the relief provided in Section 501(b) of Title 29 of the United States Code.

Dated: New York, New York

January 27, 1975

/s/ Marvin E. Frankel  
U.S.D.J.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
ANDY DINKO individually and on  
behalf of the members of the  
National Maritime Union of America,

Plaintiff,

-against-

SHANNON J. WALL, as President of  
the National Maritime Union of  
America and individually, JOSEPH  
CURRAN, as past President of the  
National Maritime Union of America  
and individually, MEL BARISIC, as  
Secretary-Treasurer of the National  
Maritime Union of America and indivi-  
dually, PETER BOCKER, JAMES MARTIN  
and RICK MILLER, as Vice Presidents  
of the National Maritime Union of  
America and individually, ANDREW  
RICH, as New York Branch Agent of  
the National Maritime of America,  
ABRAHAM E. FREEDMAN, LEON KARCHMER  
and MARTIN E. SEGAL, as former Trustees  
of the National Maritime Union Offi-  
cers' Pension Plan and individually,  
and The AMALGAMATED BANK OF NEW YORK,  
as Successor Trustee of the National  
Maritime Union Officers' Pension Plan  
and Trustee for the National Maritime  
Union Staff Pension Plan.

Defendants.  
-----x

COMPLAINT

The plaintiff above named by his attorneys, Harold B. Foner  
and Ira Leitel, of Counsel, complaining of the above named defen-  
dants, allege upon information and belief that:

AS AND FOR A FIRST CAUSE OF ACTION  
AGAINST SHANNON J. WALL, JOSEPH  
CURRAN, MEL BARISIC, PETER BOCKER,  
JAMES MARTIN, RICK MILLER AND ANDREW  
RICH.

1. The jurisdiction of this Court is founded upon Sections 501, 431, and 412 of Title 29 of the United States Code.

2. The National Maritime Union of America (hereinafter referred to as the "NMU") is a labor organization as defined by Section 402 of Title 29 of the United States Code.

3. The plaintiff, Andy Dinko, at all times hereinafter mentioned and for more than 30 years is and has been a member of the NMU.

4. The defendant, Shannon J. Wall, is President of the NMU, a member of the NMU National Office, and was formerly Secretary-Treasurer of the NMU.

5. The defendant Joseph Curran is past President of the NMU and was formerly a member of the NMU National Office.

6. The defendant Mel Barisic is Secretary-Treasurer of the NMU, a member of the NMU National Office and was formerly Vice President of the NMU.

7. The defendants Peter Bocker, James Martin and Rick Miller are and at all times hereinafter mentioned were Vice Presidents of the NMU, and members of the NMU National Office.

8. The defendant Andrew Rich is and at all times hereinafter mentioned was NMU New York Branch or Port Agent, an NMU Regional Director, and Chairman of the November 25 1974 regular NMU membership meeting held in New York.



9. On or about December 17, 1974, plaintiff Andy Dinko served demand upon the President of the NMU, the Secretary-Treasurer of the NMU and the officers of the NMU, to take appropriate action on behalf of the NMU and its members, to set aside as void the NMU Staff Pension Plan and its Declaration of Trust, which revised and replaced the NMU Officers' Pension Plan and its Trust Agreement, to permit the membership, to exercise their rights under the NMU Constitution and Section 411 of Title 29 of the United States Code to express their views upon the proposed Staff Pension Plan, to secure an accounting of NMU funds, including but not limited to the NMU Officers' Pension Plan, the NMU Staff Pension Plan, and all expenditures made pursuant to such Plans, to establish a membership Watch Dog Committee to supervise the expenditure of NMU funds, and to seek the appropriate relief.

10. Plaintiff has exhausted all the internal remedies provided in the Constitution of the NMU by serving the aforesaid demand.

11. No action was taken by the defendants and no response has been received as a result of the aforesaid demand within a reasonable time.

12. The plaintiff obtained leave to institute and commence this action by Order of the Hon. Marvin E. Frankel, United States District Judge, dated January 27, 1975. (Annexed hereto as Exhibit A).

13. By virtue of the aforesaid offices and positions held by the said defendants respectively, each was a representative of

the NMU within the meaning and intent of Section 501 of Title 29 of the United States Code and was under a fiduciary duty to the Union, its membership and to the plaintiff to hold Union money and property solely for the benefit of the organization and its members and to manage, invest and expend this money and property in accordance with the organization's constitution and by-laws and to refrain from wasting and dissipating NMU assets for improper and illegal purposes.

14. By virtue of the aforesaid offices and positions held by the said defendants respectively, they were required to make available to the NMU membership and to the plaintiff the information required to be contained in the labor organization's annual report to the Secretary of Labor, provided for in Section 431 of Title 29 of the United States Code.

15. The defendants Wall, Curran, Barisic, Bocker, Martin, Miller and Rich have violated said fiduciary and statutory duties:

(a) By making, publishing, approving or causing to be made and published the inaccurate, incomplete, misleading and deceptive "spread" given to the proposed revision of the NMU Officers Pension Plan and its Trust Agreement, which appeared in the NMU Pilot, vol. 39, No. 11, November, 1974. (A copy of which is annexed hereto and made a part hereof as Exhibit B).

(b) By failing and refusing to make available for inspection by plaintiff and other Union members in good standing the full and complete texts of the proposed NMU Staff Pension Plan.



and the NMU Officers Pension Plan, in all NMU branch offices during regular Union office hours.

(c) By the failure of the defendants to make available to Union members in good standing for inspection the full and complete texts in Spanish of the proposed NMU Staff Pension Plan and the NMU Officers' Pension Plan in all NMU branch offices during regular Union office hours.

(d) By the failure and refusal of the defendants to make available to plaintiff and other Union members in good standing an independent financial report or other adequate financial information on the NMU Officers' Pension Plan and the NMU Staff Pension Plan either through publication in the Pilot or at all NMU branch offices.

(e) By the failure of the defendants to permit plaintiff and other Union members in good standing an opportunity to express their views on the proposed revision of the NMU Officers' Pension Plan and its Trust Agreement at the regular branch meeting of the Union in New York, called expressly for that purpose, on Monday, November 25, 1974.

(f) By the failure and refusal of the defendants to make available to Union members in good standing information respecting the NMU's true and complete liabilities and disbursements.

(g) By making, approving or causing to be made and approved improvident, unauthorized and collusive contracts to guarantee pension and severance pay from the NMU General Treasury in

the event of a declaration of invalidity of Union Pension Plans to the following non-member, NMU employees:

1. Mr. Ernest Olson, Building Manager
2. Mr. Milton Bright, Controller
3. Mr. Bernie Raskin, Public Relations Director
4. Miss Ann Diamond, Executive Secretary
5. Mr. Eugene Spector, Research Director

(h) By the failure of the defendants to give notice to the Union membership of the potential NMU liabilities referred to in paragraph 15(g) either through publication in the Pilot or by making such contracts available for inspection at all NMU branch offices.

(i) By appointing or causing to be appointed, men elected to Union office, to different positions in order to pay them two and three times the salaries of the offices to which they were elected by the Union membership.

(j) By suffering and permitting excessive and improper travel and expense allowances to Union officers and employees without any itemized report or accounting to the membership.

(k) By suffering and permitting unauthorized, excessive and improper salary increases to Union officers and staff without membership knowledge or approval.

(l) By suffering and permitting miscellaneous, out of pocket officer and staff expenses to be reimbursed from Union



cash "shlush" funds without approval, authorization, minutes or records of such payments, and without itemization, accounting or reporting procedures.

(m) By failing to inform the membership that over 80% of all Union funds are on deposit, at the defendants' will, in the Amalgamated Bank of New York, chosen by defendants as successor Trustee of the NMU Officers' Pension Plan and Trustee for the NMU Staff Pension Plan.

(n) By failing to permit shore-side NMU members in the Panama Canal Zone and in Puerto Rico, comprising the Industrial, Technical and Professional Government Employees Division of the NMU, the opportunity to participate in and vote on the proposed NMU Staff Pension Plan.

16. The aforesaid acts were not solely for the benefit of the NMU and its members, were in conflict with the interests of the NMU, were in violation of the NMU Constitution, in violation of law, were improper, unauthorized and were designed to siphon Union funds to persons not authorized to receive the same and to enrich persons who were entitled to receive the payment of Union funds with payments in excess of the amounts to which they were entitled.

17. In engaging in the foregoing conduct the said officer agents and representatives of the NMU did not hold the money and property of the NMU solely for the benefit of the NMU and its members, did not refrain from dealing with the NMU as an adverse party, did not refrain from dealing on behalf of an adverse party

did not refrain from holding or acquiring any pecuniary or personal interest which conflicted with the interests of the NMU and acted illegally, arbitrarily and without authority, without the approval of the membership and in violation of their fiduciary duties.

18. In engaging in the foregoing conduct the said officers, agents and representatives of the NMU did not make available to Union members the information required to be contained in the report to the Secretary of Labor of the Union's financial condition and operations, including its liabilities, and direct or indirect disbursements, and did not give Union members the right of freedom of speech to express their views upon any business properly before the NMU regular meeting on November 25, 1974.

19. The acts heretofore alleged constitute illegal and collusive acts designed to and which did in fact waste and injure the property and funds of the NMU and its members.

20. The defendants have repeatedly denied plaintiff access to the NMU's complete membership lists, an inspection and copying of which is necessary in order to inform the members of the NMU, on whose behalf this suit is commenced, of the facts of such action and the relief sought therein.

AS AND FOR A SECOND CAUSE OF ACTION  
AGAINST ABRAHAM E. FREEDMAN, LEON  
KARCHMER, MARTIN E. SEGAL AND THE  
AMALGAMATED BANK OF NEW YORK.

21. The plaintiff repeats and realleges as part of this cause of action each and all of the allegations contained in



paragraphs 1 through 14 of the first cause of action with like effect as if herein fully realleged and incorporates herein all the facts therein set forth.

22. The defendants Abraham E. Freedman, Leon Karchmer and Martin E. Segal were Trustees of the NMU Officers' Pension Plan until their resignations were accepted, subject to the submission of a satisfactory accounting from such trustees, in December, 1974.

23. The defendant Amalgamated Bank of New York was designated by the NMU National Office as the Successor Trustee to the defendants Freedman, Karchmer and Segal and trustee of the NMU Staff Pension Plan in December, 1974.

24. The aforesaid defendants are or were agents or representatives of the NMU within the scope and meaning of Section 501 of Title 29 of the United States Code.

25. The defendant trustees Freedman, Karchmer, Segal and the Amalgamated Bank of New York have been the recipients of payments made to them as trustees of the NMU Officers' and Staff Pension Plans by the NMU, and as such are necessary and proper parties to this action as stakeholders of the payments made to them as trustees and the parties responsible for any and all improper and illegal payments made to NMU officers and staff under and pursuant to these pension plans.

26. The precise amount of excessive, improper and illegal payments that should be refunded to the General Treasury of the NMU can only be determined after an accounting by defendant

trustees Freedman, Karchmer, Segal and the Amalgamated Bank of New York.

WHEREFORE, plaintiff demands judgment as follows:

1. For an Order setting aside and declaring void the NMU Staff Pension Plan and its Declaration of Trust, which revised and replaced the NMU Officers' Pension Plan and its Trust Agreement;
2. For an injunction, enjoining, restraining and prohibiting the defendants from making any payments or expenditures pursuant to or under the NMU Staff Pension Plan and its Declaration of Trust;
3. Directing an independent examination of the books, records and accounts necessary to verify Union reports submitted to the Secretary of Labor pursuant to Section 431 of Title 29 of the U.S.C.; an accounting, by Court appointment, of the NMU, its general fund, the NMU Officers' Pension Plan and the NMU Staff Pension Plan, and of all monies paid by the NMU, its general fund and the NMU Officers' Pension Plan to the NMU Staff Pension Plan;
4. Directing an independent accounting of all monies improperly and wrongfully paid pursuant to the NMU Staff Pension Plan to any and all officers and employees of the Union;
5. For a money judgment against the respective defendants responsible for damages sustained by the NMU and its membership.



A Do I have what?

Q Personal knowledge.

A I have been told by members.

Q Do you know the names of those members?

A At the moment, no. They are afraid of reprisals in giving their names.

Q Did they give you their names when they gave you the information?

A No.

Q Is it fair to say that the only information you have regarding travel and expense allowances for union officers and employees is what you were told by these unknown members?

A They are not unknown. They are members in the union. I do not have their names, but they are known.

Q But is the information that you used to make this claim sir, that is Paragraph 15(j), is it based on what you were told by the members?

A At the moment, yes.

Q Is it based on anything else?

A They promised me further information later.

Q Later?

A Right.

Q Did they tell you when that would be?

A No. No.  
Could I go out for a moment?

MR. HOWARD: Let's take a break.  
(Thereupon, a recess was declared  
at 12:15 P.M.)

(At 12:25 the deposition resumed.)

Q We are still with Paragraph 15(j).

Mr. Dinko, can you give us any specific examples of union officers or employees receiving excessive or improper travel and expense allowances?

A Not at the moment.

Q Do you have such information some place else?

A (Pausing) No."

It is incredible, but true, that Mr. Dinko has leveled charges against the defendant officers which amount to outright larceny and yet has absolutely no information to back up his accusations. This pattern of making outrageous charges without foundation runs throughout this action and demonstrates an intent to harass and gain personal notoriety - as opposed to the necessary "good cause" to commence this proceeding.

d. Paragraph 15(k) of the complaint alleges:

"By suffering and permitting unauthorized, excessive and improper salary increases to Union officers and staff without membership knowledge or approval."

On this point the verified application merely states at page 14:

"D) Officers and staff members have been given unauthorized salary increases without membership knowledge or approval."

Mr. Dinko's deposition indicated that this allegation is really a rehash of paragraph 15(i). (pp. 197-98) He contends that certain NMU officers were elected to specific offices and are receiving salaries higher than their elected positions. His information, however, is predictably based on what he has been told by unknown individuals.

At his deposition Mr. Dinko was unable to specify any authority in the NMU constitution prohibiting an officer from holding more than one position with the union (pp. 199, 202).

Thus, Mr. Dinko can neither support the allegations of paragraph 15(k) nor point to any portion of the NMU Constitution which prohibits the conduct of which he complains. Under these circumstances, he demonstrably cannot show "good cause" for paragraph 15(k).

e. Paragraph 15(l) of the complaint alleges:



6. For an Order providing for an inspection and copying of the NMU's complete membership lists, including all NMU Divisions;

7. For the establishment of a membership Watch Dog Committee to supervise the expenditure of NMU funds, under Court direction and supervision, in order to protect the membership from a continuing misappropriation of Union funds; and

8. For whatever other, further and different relief the Court may deem just in the circumstances together with the costs and disbursements of this action including but not limited to a reasonable attorneys' fee as provided by Section 501(b) of Title 29 of the United States Code and under common law principles.

---

HAROLD B. FONER  
IRA LEITEL, of Counsel

Attorneys for Plaintiff  
Office and P.O. Address  
188 Montague Street  
Brooklyn, New York 11201  
(212) 624 - 5775

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANDY DINKO, individually and :  
on behalf of the members of :  
the National Maritime Union :  
of America, :

Plaintiff, :

v. :

SHANNON J. WALL, et al., :

Defendants. :  
-----X

73 Civ. 524 (HFW)

NOTICE OF MOTION

S I R S:


PLEASE TAKE NOTICE upon the annexed affidavit of STANLEY B. GRUBER, sworn to the 28th day of May 1975, the undersigned will move this Court before the Honorable Henry F. Werker at the United States Court House, Foley Square on the 3rd day of June 1975 for an Order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the complaint on the ground that the Court lacks jurisdiction over the subject matter of the action and for such other and further relief as to this Court seems just and proper.

Yours, etc.

ABRAHAM E. FREEDMAN  
Attorney for Defendants

Dated: New York, New York  
May 28, 1975

By

  
346 West 17th Street  
New York, New York 10005

D



TO: COVINGTON, HOWARD, HAGOOD & HOLT  
Attorneys for Plaintiff  
15 Columbus Circle  
New York, New York 10023

WILLKIE FARR & GALLAGHER  
Attorneys for Defendant Martin E. Segal  
1 Chase Manhattan Plaza  
New York, New York 10005

SZOLD, BRANDWEN, MEYERS & ALTMAN  
Attorneys for Defendant Amalgamated Bank of New York  
30 Broad Street  
New York, New York 10004

## A close-up of a handwritten musical note on a five-line staff. The note is a half note, represented by a vertical stem and an oval head. The staff lines are horizontal and black.

[illegible]

# AFFIDAVIT

75 Civ. 524 (HFW)

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$$-Y$$

) SS:

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conflict of interest between the union and defendant officers. The facts set forth herein demonstrate that plaintiff cannot make such a showing and that, indeed, plaintiff did not have "good cause" to institute this action - his actual purpose being to harass the Union and obtain publicity for himself.

2. The complaint is annexed hereto as Exhibit "1." In his complaint, brought pursuant to Section 501 of the LMRDA, plaintiff alleges that the defendant officers of National Maritime Union of America, AFL-CIO ("NMU") have breached their fiduciary obligations to the Union in a number of ways which will be enumerated herein. Essentially, these alleged violations can be broken down to three categories:

- A. Charges relating to the adoption by the Union of the NMU Staff Pension Plan;
- B. Allegations that the defendant officers have refused to make certain financial and membership data available to plaintiff and other members; and
- C. Allegations that the defendant officers have misappropriated Union funds.

Based on these charges plaintiff seeks the following broad and sweeping relief which would take the administration of the Union out of the hands of its elected officials:

- i. An Order setting aside and declaring void the NMU Staff Pension Plan;
- ii. An Order enjoining defendants from making any payments under the NMU Staff Pension Plan;
- iii. An Order directing an independent examination of the NMU's books, records and accounts necessary to verify Union reports submitted to the Secretary of Labor pursuant to Section 431 of Title 29 of the U.S.C.; an accounting, by Court appointment, of the NMU, its general fund, the NMU Officers' Pension Plan and the NMU Staff Pension Plan, and of all monies paid by the NMU, its general fund and the NMU Officers' Pension Plan to the NMU Staff Pension Plan;

- iv. An Order directing an independent accounting of all monies improperly and wrongfully paid pursuant to the NMU Staff Pension Plan to any and all officers and employees of the Union;
- v. A money judgment against the respective defendants responsible for damages sustained by the NMU and its membership;
- vi. An Order providing for an inspection and copying of the NMU's complete membership lists, including all NMU divisions;
- vii. The establishment of a membership Watch Dog Committee to supervise the expenditure of NMU funds, under Court direction and supervision, in order to protect the membership from a continuing misappropriation of Union funds; and
- viii. For whatever other, further and different relief the Court may deem just in the circumstances together with the costs and disbursements of this action including but not limited to a reasonable attorneys' fee as provided by Section 501(b) of Title 29 of the United States Code and under common law principles.

3. Pursuant to Section 501(b) the plaintiff submitted a verified application to this Court seeking leave to commence this action. Annexed hereto as Exhibits "2" and "3" are the application and affidavit submitted by plaintiff in support of that application for leave to commence the action. The allegations of the application track the allegations of impropriety contained in the complaint. It was considered, ex parte, by Judge Frankel who signed an Order dated January 27, 1975 granting leave to start the action.

Until now, the defendants have not had an opportunity to challenge the propriety of the charges raised by plaintiff in his application and affidavit, and his complaint. Following the commencement of this action defendants served and filed an answer denying plaintiff's allegations and immediately noticed plaintiff's deposition. A copy of the answer is annexed hereto as Exhibit "4." Thereafter, deponent took plaintiff's deposition



over two sessions on April 15 and April 22, 1975. In order to take this deposition it was necessary to obtain an Order from this Court, dated April 3, 1975, compelling plaintiff to appear or face dismissal of his action. The testimony of plaintiff at his deposition was both incredible and enlightening. It establishes that plaintiff had no basis on which to level the serious charges contained herein and that his credibility is non-existent. We have annexed a copy of the transcript of plaintiff's deposition as Exhibit "5a" and "5b" and will make frequent reference to this transcript hereafter. In dealing with plaintiff's allegations deponent will consider the charges of misappropriation of Union funds, the charges relating to the alleged refusal to make certain financial and membership data available to members and the charges relating to NMU Staff Pension Plan - in that order. Thereafter, deponent will present additional materials demonstrating plaintiff's complete lack of credibility.

4. The Allegations of Misappropriation of Union Funds

a. Paragraph 15 of the complaint sets forth the specific allegations of impropriety which plaintiff has lodged against the defendant officers. Paragraphs 15(g), (i), (k) and (l) relate to the charges of misappropriation of Union funds.

Paragraph 15(g) of the complaint alleges:

"By making, approving or causing to be made and approved improvident, unauthorized and collusive contracts to guarantee pension and severance pay from the NMU General Treasury in the event of a declaration of invalidity of Union Pension Plans to the following non-member, NMU employees:

1. Mr. Ernest Olson, Building Manager
2. Mr. Milton Breit, Controller
3. Mr. Bernie Raskin, Public Relations Director
4. Miss Ann Diamond, Executive Secretary
4. Mr. Eugene Spector, Research Director"

On this charge plaintiff stated at page 13 of his verified application that upon "information and belief:"

"The defendants have executed, without membership knowledge, authorization or ratification, written contracts to guarantee pension and severance pay from the NMU General Treasury in the event of a declaration of invalidity of Union Plans to the following non-member NMU employees... "

At plaintiff's deposition it developed that his "information and belief" was non-existent. He was asked (p.189):\*

"Now, will you tell us on what facts you based your allegations that these contracts exist? In other words, how do you know that they have the contracts?"

and the following colloquy occurred (p.189):

A "I have been told by different members that they have the contracts.

Q What members told you?

A I can't give their names due to fear of reprisals.

Q Do you know their names?

A (Pausing.) I have their names home. Not here at the moment."

Mr. Dinko was then asked what he knew about the contents of these contracts and how he knew they were "improvident, unauthorized and collusive" (pp.190-191):

Q "Have you ever seen any of these contracts, Mr. Dinko?

A No, I haven't.

\* Unless otherwise noted, page references are to pages of the transcript of the deposition.



Q These members who told you about these contracts, what did they tell you about the ?

A I can't recall.

Q You cannot recall anything that they told you?

A I have never seen them.

Q No, I am saying -- you said you had conversations with members who told you that such contracts existed. Now, my question is did they tell you anything about the contents of those contracts?

A No.

Q No?

A No.

Q So how did you know that these contracts were improvident, unauthorized and collusive as alleged in 15(g) of your complaint?

A Will you rephrase that question again?

MR. GRUBER: Mr. Reporter, please read the question.

(Thereupon, the pending question was read by the reporter.)

A The membership don't know how much money these people are getting.

Q Is that your answer, Mr. Dinko?

A Yes."

Inquiry was made as to whether any attempt was made by Mr. Dinko to inspect these contracts and he replied that he had made such a request to defendant Rich on November 15, 1974 and defendant Wall on November 25, 1975 (p.191). This last testimony was completely at odds with Mr. Dinko's recounting of these alleged conversations with Messrs. Rich and Wall at pages 2 and 3 and 4 of his affidavit and pages 78-82 of his deposition. Thus, his supporting affidavit makes absolutely no reference to such a request for inspection. At his deposition he clearly testified that the only conversation he had with Rich on November 15, 1974

concerned a request for inspection of the proposed Staff Pension Plan(p.79).

Mr. Dinko was clearly unable to support his charge that these contracts are "improvident, unauthorized and collusive." His reply that the membership does not know how much these people are getting does not relate to any of these charges. Indeed, Article 8, Section 11(a) of the NMU Constitution (annexed hereto as Exhibit "6") clearly authorized the National Office of the Union to fix the rates of pay and fringe benefits for Union employees:

"The employment of technical, clerical, administrative and other personnel necessary for the effective administration of the Union's affairs shall be the responsibility of the National Office. The National Office is authorized to establish the compensation for such personnel, including pension, welfare and other fringe benefits. Plans or programs for providing pension, welfare, and other fringe benefits may be combined with similar plans or programs for providing such benefits to officers of the Union."

Since Mr. Dinko has absolutely no evidence of improvidence or collusion and such contracts are clearly authorized by the Union Constitution, he can neither show "good cause" to sue on this point nor establish a reasonable showing of likelihood of success.

b. Paragraph 15(i) of the complaint alleges:

"By appointing or causing to be appointed, men elected to Union office, to different positions in order to pay them two and three times the salaries of the offices to which they were elected by the Union membership."

Reference to this allegation is contained at page 14 of the verified application where plaintiff charged:

"The defendants, without authorization or membership ratification, have taken men elected to one Union office and appointed them to different positions in order to pay them two and three times the salaries of the office to which they were elected. For example, Mr. Elwood Hampton, elected a Patrolman, has been made, by appointment, a Regional Director. Defendant Andrew Rich was elected Port Agent in New York and has been appointed to Regional Director."



Once again, Mr. Dinko's deposition revealed that the source of his information is what he was told by unknown individuals and that he had absolutely no basis to support the charge. With regard to Mr. Rich and Mr. Hampton the following questions and answers occurred (p.193-195):

Q Let's take Mr. Rich first. He was elected to the position of branch agent in the Port of New York; is that correct?

A I believe so.

Q what different position has he been appointed to?

A I believe -- a member mentioned it to me, that he has been appointed to that and he is drawing a higher salary than a port agent.

Q Do you know what other position he holds other than branch agent?

A At the moment, no.

Q Do you know how much extra he gets for this other position?

A The amount of money, I do not know.

Q Your information as to the fact he gets more money comes from other members who told you that?

A Yes.

Q Do you know the names of those members who gave you that information?

A No, I do not, They are afraid of reprisals and they won't give their names.

Q What about Mr. Hampton? Was he elected to any office?

A I believe he was.

Q Do you know what it was?

A I believe it was patrolman.

Q Do you know what other position he was appointed to?

A At this moment, no.

Q Do you know how much extra he gets?

A The amount of monies, no.

Q In your allegation, Paragraph 15(i), you said that they get paid two and three times the salaries of the offices to which they were elected.

A I believe so, but I do not know the exact figure.

Q Who told you that they get paid two and three times the salary --

A Members.

Q And that is the basis for your making that contention?

A Yes.

Q And you do not know the names of those members?

A No, not at the moment."

This testimony demonstrates a complete lack of knowledge or evidence to support the allegations of Paragraph 15(i). Surely, "good cause" cannot be present under such circumstances.

c. Paragraph 15(j) of the complaint alleges:

"By suffering and permitting excessive and improper travel and expense allowances to Union officers and employees without any itemized report or accounting to the membership."

The verified application says only the following about this most serious charge at page 14:

"Officers have been given excessive travel and expense allowances without any itemized report or accounting to the membership."

Mr. Dinko was completely unable to amplify this allegation at his deposition. Once again, his information came from unknown individuals without any form of specific support (pp.195-197):

Q "Paragraph 15(j), on Page 6. It alleges that defendants, I assume, suffered and committed, "... extensive and improper travel and expense allowances to Union officers and employees without any itemized report or accounting to the membership."

Do you have personal knowledge of any excessive and improper travel and expense allowances to union officers and employees?



"(1) By suffering and permitting miscellaneous, out of pocket officer and staff expenses to be reimbursed from Union cash "shlush" funds without approval, authorization, minutes or records of such payments, and without itemization, accounting or reporting procedures."

Page 14 of his verified application says only the following on this point:

"E) Miscellaneous, out of pocket expenses are reimbursed from Union cash "shlush funds" without officer approval or authorization, and without itemization or accounting procedures. There are no minutes of such payments and no records. Nor are the provisos of Section 431 complied with."

The only specific example Mr. Dinko could give at his deposition on this point was that a Mr. Alvin Shapiro received the incredible sum of \$00,000 from the "shlush fund" (p. 204). However, this information, like all his other information, came from what he was told by individuals who would not reveal their names (p.204).

In sum, though Mr. Dinko has raised serious charges of misappropriation of union funds, his sworn testimony clearly demonstrates that at best his information is based on the most unreliable form of hearsay from unknown individuals and, at worst, is a complete fabrication. As will be shown, there is ample evidence that Mr. Dinko will not hesitate to level any charge - no matter how severe - to advance his interests.

5. The Allegations Relating to Refusal to Provide Certain Financial and Membership Data

a. Paragraph 15(d) of the complaint alleges:

"(d) By the Failure and refusal of the defendants to make available to plaintiff and other Union members in good standing an independent financial report or other adequate financial information on the NMU Officers' Pension Plan and the NMU Staff Pension Plan either through publication in the Pilot or at all NMU branch offices."

Mr. Dinko contended at his deposition that his letter of December 17, 1974 addressed to the union requested an "independent financial report or other adequate financial information on the NMU Officers' Pension Plan and the NMU Staff Pension Plan either through publication in the Pilot or at all NMU branch offices" (p.173). A copy of that letter is annexed hereto as "Exhibit '7'". The letter in fact demands the following on this point:

"I demand a complete accounting of all Union expenditures involving the officers Staff Pension Plan and all benefits associated therewith. In addition I further demand a true and accurate accounting of all Union officers and staff, who are participating recipients in this plan; as well as monies expended or allocated for each individual; family benefits and health benefits, etc."

However, nowhere in his letter, complaint or verified application does plaintiff state why such an accounting is necessary. Accountings can be costly, time-consuming and burdensome and should not be required without some showing of wrongdoing. Neither Mr. Dinko's papers nor his testimony even hint at any evidence of wrongdoing.

Surely "good cause" does not exist to sue for an accounting when, as here, there is no showing that an accounting is necessary.

b. Paragraph 15(f) of the complaint alleges:

"(f) By the failure and refusal of the defendants to make available to Union members in good standing information respecting the NMU's true and complete liabilities and disbursements."

Mr. Dinko claimed at his deposition that he requested such information from Mr. Rich on November 15, 1974. (p.136) This testimony conflicted with his affidavit (p.2-4) and other portions of his deposition (pp.78-82). This also holds true for his alleged request of such material from Mr. Wall on November 25, 1974.



However, even assuming that Mr. Dinko ever requested "information respecting the NMU's true and complete liabilities and disbursements" - a very broad assumption - there is no showing by plaintiff that the union is presently presenting an untrue picture. Mr. Dinko conceded at his deposition that periodic financial reports are published in the Pilot regarding NMU general funds (p.187). When questioned about the accuracy of these reports, he testified (pp.187-88)

"Q I want to see if I understand this allegation, Mr. Dinko, there are periodic financial reports published in the Pilot regarding the NMU general funds, are there not?

A Yes.

Q Is it your contention that those reports do not contain accurate information?

A Yes.

Q Do you have any facts on which to support that contention?

A At the moment, no.

Q Pardon me?

A At the moment I don't have them.

Q Before this deposition, before today, did you ever have such facts in your possession?

A I can't recall just to answer that question.

Q You can't recall whether you had such facts in your possession? Is that your answer?

A Yes."

NMU files annual reports with the U.S. Department of Labor which contain detailed information on the Union's receipts and disbursements. These "LM-2" reports are filed pursuant to the LMRDA. Copies of these reports are available for inspection by plaintiff or any other Union member. It is clear that at present plaintiff does not have good cause to challenge the accuracy of these reports and is using this proceeding as a means of conducting

a harassing fishing expedition.

c. Paragraph 15(h) of the complaint alleges:

"(h) By the failure of the defendants to give notice to the Union membership of the potential NMU liabilities referred to in paragraph 15(g) either through publication in the Pilot or by making such contracts available for inspection at all NMU branch offices."

This allegation relates to the employee contracts referred to in paragraph 15(g) of the complaint. As previously noted, Article 8 Section 11 of the NMU constitution gives full authority to the NMU National Office to make arrangements for employing and remunerating NMU employees. There is no requirement of publication of such arrangements and Mr. Dinko has not presented a shred of evidence to show that "improvident, unauthorized and collusive contracts" were entered into. Nor does it appear that Mr. Dinko ever requested an opportunity to inspect such contracts. His letter of December 17, 1974 is silent on this point and his claims at his deposition that he made such requests of Messrs. Rich and Wall on November 15, 1974 and November 25, 1974 are unreliable for reasons previously set forth. Moreover, if such requests had been made prior to December 17, 1974 they would surely have been contained in his letter of that date which was obviously the planned precursor to this litigation.

d. Paragraph 15(m) of the complaint alleges:

"(m) By failing to inform the membership that over 80% of all Union funds are on deposit, at the defendants' will, in the Amalgamated Bank of New York, chosen by defendants as successor Trustee of the NMU Officers' Pension Plan and Trustee for the NMU Staff Pension Plan."

This allegation is also contained at page 15 of the verified application:

"8 The defendants NMU Officers failed to inform the membership of the fact that over 80% of all Union funds are on deposit, at the will of such officers, in the Amalgamated Bank of New York, chosen by such



officers as successor Trustee of the NMU Officers Pension Plan and Trustee for the NMU Staff Pension Plan."

Mr. Dinko admitted at his deposition that he has no personal knowledge regarding this allegation (p.205)

"Q Paragraph 15(m), on page 7. That paragraph alleges: That over 80% of all union funds are on deposit, it is in the Amalgamated Bank of New York.

How did you get that information, Mr. Dinko?

A By members, rank and file members.

Q And you do not know their names, either, I suppose?

A No, they are afraid to give their names due to reprisals when on ships, they would have them hurt or beat up.

Q So you do not know personally whether in fact 80 per cent of NMU funds are on deposit in the Amalgamated Bank of New York, do you?

A At this moment, no."

Even if the allegation were true, there could be no conceivable impropriety in depositing union funds in a respected bank like the Amalgamated - nor has plaintiff suggested to the contrary. Amalgamated's status as Trustee of the NMU Staff Pension Plan certainly does not conflict with its role as depository of union funds.

#### 6. The NMU Staff Pension Plan

The remaining allegations of breach of fiduciary and statutory obligations contained in paragraph 15 of the complaint relate to the NMU Staff Pension Plan. This Plan provides pension benefits for NMU officers, and NMU employees not otherwise covered by the union for pension purposes. On November 25, 1974 the membership of the Union voting at regular membership meetings held at all branches throughout the country, and in Panama and Puerto Rico, voted to approve the Plan as the successor to the NMU

Officers Pension Plan. Copies of the NMU Staff Pension Plan and NMU Officers Pension Plan are annexed hereto as Exhibits "8" and "9" respectively. Copies of the minutes of all NMU regular branch membership meetings of November 25, 1974 are annexed hereto as Exhibits "10 through 36."

Plaintiff makes the following contentions regarding the Plan:

a. That the "spread" given to the proposed Plan in the November Pilot (The union's official organ) was "inaccurate, incomplete, misleading and deceptive" (paragraph 15(a)).

b. That the full texts of the proposed Plan and the NMU Officers Pension Plan were not made available for inspection in either English or Spanish at all NMU branch offices (paragraphs 15(b) and (c));

c. That members were not permitted to express their views on the proposed Plan at the November 25, 1974 meeting held in the Branch of New York (paragraph 15(c));

d. That shore-side members in Panama and Puerto Rico were denied the opportunity to vote on the proposed Plan (paragraph 15(n)).

These allegations will be treated seriatim:

A. The Pilot "Spread"

The "spread" of which plaintiff complains is annexed hereto as Exhibit "37". This article was published pursuant to Article 4 of the NMU Constitution which provides in pertinent part:

"Section 1 -- Principle: All decisions of the National Council, and the National Office between Conventions, which change the established policies, programs, and procedures of the Union must first be approved by the membership before they are made effective.

Section 2 -- Method: Membership approval referred to in Section 1 of this Article shall be obtained in the following manner:



(a) The decision of the National Council and/or the National Office shall be spread in full in the NATIONAL MARITIME UNION PILOT or a special newsletter, provided that action on the decision is not required before the PILOT or special newsletter can be published and distributed to the membership. The decision shall then be read at the regular membership meeting in each Branch office operated by the Union, provided that in the event a regular membership meeting is not scheduled within the time necessary for action upon the decision, the decision shall then be read in full at a special membership meeting called for that purpose. After discussion by the membership, action upon the decision shall be taken by vote of the membership present. The approval of a majority of the total members voting in all Branches shall be required in order to make the decision operative."

At his deposition plaintiff found three faults with the Pilot article (pp.154-55).

1. The names of the Plan beneficiaries were not given;
2. The amounts they would each receive was not given; and
3. The length of time required to receive benefits was not mentioned.

In his verified application plaintiff stated:

1. The Notice did not state the differences between the proposed Plan and the existing Plan;
2. It did not state the formula upon which benefits were to be computed;
3. It did not state how much money was to be allocated and the type of benefits payable;
4. It did not indicate the total amount to be funded from the NMU General Fund;
5. It did not indicate the cost to each member of the benefits to be paid; and
6. It did not indicate that the National Office would determine eligibility and compute and certify benefits.

Contrary to all of these allegations, however, the

Pilot "spread" conforms to the NMU constitution's requirements.

Thus the spread:

1. Clearly notes the principal changes in the revised Plan as well as the reason for the changes;
2. Adequately describes the changes in Coverage, Funding, Costs, Benefits and Administration of the Plan;
3. States that \$350,000 will be transferred from the General Fund to fund the revised Plan;
4. State that contributions of up to 26% of base pay of officers and non-officers will be made to the Plan by the Union;
5. States that a benefit formula computed on the basis of earnings in the best 5 of the last 10 years of employment will be utilized instead of all service since 1963, and further states that this change has already been approved by the membership in May 1972;
6. States that the National Office will act as the Pension Committee for the Plan and will be responsible for all basic policy determinations; and
7. Describes the non-officer employees who will be covered by the Plan (those not covered for pension purposes by any other plan) and the reason for their inclusion.

It is submitted that on its face the Pilot notice is sufficient to show that plaintiff cannot reasonably show a likelihood of success or show "good cause" for his attack on this article.

D. The Availability of Texts of the Plans

In alleging that he and other members were denied an opportunity to inspect the full texts of the Staff and Officers



Plans, plaintiff puts his credibility squarely on the line and comes a cropper. In his affidavit in support of his application to start this action, he swears that Evaristo Rodriguez and Emanuel Van Eckelen - both union members - told him they had been denied access to those texts (pp.3 and 4 of affidavit). These allegations were elaborated upon at his deposition (pp.33-45, 124, 132-33). However, annexed hereto as exhibits "38" and "39" are statements from Messrs. Rodriguez and Van Eckelen which completely refute Mr. Dinko's affidavit and sworn testimony. It is astonishing that Mr. Dinko would have the temerity to place his fabrications before this Court in a sworn statement.

Similarly, his testimony regarding his own request to inspect the Plan (pp.78-82) is completely at odds with his affidavit. His affidavit states that he did not see Rich on November 15, 1974 as he testified at his deposition. It makes no mention that he was assaulted and pushed out of Rich's office by 3 "goons" when he made the request. Surely, such facts - if they occurred - would have been of sufficient importance to place in his affidavit.

In addition, plaintiff conceded that he had no idea whether any members were permitted to inspect the texts before the November 25, 1974 vote (pp.166-68) and was unable to give any information on what had happened in branches other than New York (p.168).

Although plaintiff contends that 50% of NMU's membership speak Spanish, this contention is not based on statistical data - but conversations with other members (pp.169-171). More importantly, he has no idea of how many of these Spanish-speaking members cannot read English (p.171). This puts to rest any con-

tention regarding the necessity to publish the texts in Spanish.

c. The November 25, 1974 New York Membership Meeting

Here again plaintiff's version of what transpired at the November 25, 1974 meeting in New York, is undercut by his utter lack of credibility. He alleges at paragraph 15(e) of the complaint:

"(e) By the failure of the defendants to permit any other Union members in good standing an opportunity to express their views on the proposed revision of the NNU Officers' Pension Plan and its Trust Agreement at the regular branch meeting of the Union in New York, called expressly for that purpose, on Monday, November 25, 1974."

Minutes of each membership meeting are transcribed and copies are made available for the membership. The plaintiff obtained a copy of the November 25, 1974 Branch of New York membership meeting minutes from the union hall and gave them to his attorney (p.138). A copy of these minutes were annexed as an Exhibit "III" to plaintiff's verified application and were referred to in the application as support for Mr. Dinko's argument that the defendant officers failed to afford members the right to express their views at the meeting. (See p.12 of application.)

Indeed, plaintiff first appeared to concede the correctness of these minutes at his deposition (p.139). Later, however, he took issue with the minutes which he, himself, had used as an exhibit to a verified application (pp.175-77). Nonetheless, he was unable to say what was not accurate about the minutes (p.177). A copy of these minutes are annexed as Exhibit "40".



Although plaintiff alleges that members were not permitted to express their views at the meeting, he admitted at his deposition that certain opponents of the incumbent union administration were permitted to speak (p.178). Yet he says he heard no one speak against the proposed Plan (p.178-79). However, the minutes offered by plaintiff himself show:

1. Eugene V. Herson, a former candidate for President of the Union, spoke in opposition to the administration for 3 pages of the minutes (p. 13-15 of minutes) and "applause" for his comments were noted.

2. Jonathan Brooks, vehemently spoke against the Plan (p.19-20 of minutes).

3. Raymond Stokes questioned the wisdom of the Plan (p.20 of minutes).

4. Alton Z. Thompson opposed the Plan (p.21 of minutes).

5. William Meakens said the membership had been tricked and asked the Chairman to explain the new Plan (p.21).

At his deposition plaintiff insisted that no vote was taken on the pension plan (pp.83,179). This is directly contrary to the minutes (p. 24 of minutes) and is in contrast to his verified application which clearly states that there was a "vote taken" (p.12 of application). In addition, his affidavit in support of the verified application refers to a November 25th vote (p.4 of affidavit) and when questioned about this, plaintiff conceded "there was hands and shouting out" (p.131).

The minutes do not reflect that Mr. Dinko sought to obtain the floor although Mr. Dinko claims he did on several occasions. He contends that the Chairman mentioned him by name

(p.86) but the minutes do not accord with this testimony. When asked if other members attended the meeting, he testified that several hundred "goons" were present (p.86). A "good" in plaintiff's parlance is one who harasses, threatens and beats people up. (p.87). Although he noted that some of these "goons" were NMU members, he then insisted that many of them were members of a rival union, the Seafarer's International Union (SIU), who often came to NMU meetings to terrorize NMU seamen (pp.86-90). When pressed on this point, however, he conceded he had no personal knowledge of such SIU activity and had never seen anyone he knew to be an SIU member at an NMU meeting (p.89-90).

Plaintiff agreed that votes cast at membership meetings outside the Branch of New York carry as much weight as a vote cast in New York. (p.181). This is in conformity with Article 4 of the NMU Constitution which refers to membership meetings at all branches. Plaintiff was not at the other branch meetings on November 25, 1974 and has presented no allegations as to what transpired at those meetings. The minutes of those meetings (Exhibits "10" through "36") conclusively show that even if the entire membership attending the New York meeting voted in opposition to the Plan, it still would have passed by a substantial margin.

d. The Panama and Puerto Rico Vote

Included in the attached minutes of November 25, 1974 branch meetings are the minutes of meetings held in the Panama and Puerto Rico branches. (Exhibits "35" and "36"). These minutes reflect that a vote was taken on the proposed Plan. However, plaintiff has alleged at paragraph 15(n) of his complaint:



"(n) By failing to permit shore-side NMU members in the Panama Canal Zone and in Puerto Rico, comprising the Industrial, Technical and Professional Government Employees Division of the NMU, the opportunity to participate in and vote on the proposed NMU Staff Pension Plan."

His sole basis for this allegation is what he was told by members who came to him in New York and said they didn't know of any vote in Puerto Rico and Panama (pp.184-85). As expected, he neither knew the names of these members nor whether they were from Puerto Rico or Panama (p.185).

Mr. Dinko's allegations regarding the adoption of the NMU Staff Pension Plan and his testimony in support thereof, are riddled with inconsistencies, exaggerations and apparent untruths. His credibility, or lack of same, is vitally interwoven with each allegation concerning the adoption of the Plan, save the accuracy and validity of the Pilot article on the proposed Plan. Depone submits that the article stands on its own as a proper notice to the membership under Article 4 of the NMU constitution and that the remainder of plaintiff's charges are totally unsubstantiated and lacking of "good cause." We now turn to other testimony which completely destroys plaintiff's credibility.

7. After Judge Frankel signed the Order on January 27, 1975, permitting the filing of this lawsuit, the plaintiff called a press conference for February 3, 1975 at the New York Sheraton Hotel (pp.212-15). Annexed hereto as Exhibit "41" is the release sent out announcing the conference (the document was marked as Exhibit 8-A at the deposition). The plaintiff testified that union members whose names he did not know, prepared and sent out Exhibit "41" and notified the reporters - all without his asking (pp.212-15). He made the same claim about the press release dated February 3, 1975, annexed as Exhibit "42" and identified as Exhibit 8 at his deposition. However, he conceded his wife made

arrangements for the room at the hotel (p.212).

Both documents contain Mr. Dinko's home phone number. They were obviously prepared by Mr. Dinko and his attorneys since they make specific reference to the material contained in his application papers. The same irresponsible and unsupported charges contained in those papers and the complaint are set forth in these notices to the Press.

In addition, these notices to the Press identify Mr. Dinko as the Chairman of the "National Maritime Union Rank and File Committee". The "chairman", however, is sadly lacking in knowledge about his own committee. At first he testified that the Committee was formed over a year ago (p.206). However, he had no idea how many members belonged to the Committee and conceded no membership records were kept (pp.206-7). Shortly thereafter, he testified that the committee was "being formed" and "was not set up yet". "Members are just helping me as we go along" (p.209).

Plaintiff did manage to get newspaper articles published in at least two newspapers - the Journal of Commerce on February 4, 1975 and The Baltimore Sun on February 10, 1975. These articles were made into leaflets and were distributed by plaintiff to NMU members (pp.208,216). These leaflets are attached as Exhibits "43" and "44" and were identified as Exhibits 7 and 9 in the deposition.

The Journal of Commerce article indicated that at the press conference plaintiff stated his Rank and File Committee numbered more than a thousand. He backed off this statement at his



deposition, however (pp.206-7). Plaintiff also charged at the press conference that \$125,000 had been paid a retiring NMU Southern port agent. At his deposition he couldn't recall whether he had made that statement and the name of the agent in question (p.210). The article repeated Mr. Dinko's charge that a retiring security chief had received \$200,000. However, at his deposition he couldn't recall whether he made that charge at the press conference and stated that members have told him such a thing (p.210-11). As usual, he did not know the names of those members (p.211).

The leaflet containing the Baltimore Sun article states that the SIU, NMU's rival union, has obtained a 10 year contract for all jobs aboard the S.S. "United States", the largest U.S. flag passenger vessel and an NMU ship. The leaflet asks the rhetorical question: "We would like to know how much money the Shannon Wall - Mel Barisic gang received for the underhanded deal?" When asked at his deposition whether it was true that SIU had obtained such a contract, Mr. Dinko responded (p.217):

"I can't disprove it and I can't prove it."

This leads to perhaps the most remarkable thing of all Mr. Dinko's insistence that he did not prepare these leaflets. He testified that they were prepared by members whose names he did not know - some of whom were members of his own committee! (p.209-216). Yet the leaflets are stamped at the bottom with his name, address and telephone number. He did agree, however, that he had distributed the leaflets after reading them (pp.210,216).

The press conference, the leaflets and Mr. Dinko's testimony regarding both, clearly establish his complete lack of reliability and his motive for using this lawsuit as a means of drawing attention to himself and furthering his grandiose political ambitions.

As will be shown next, Mr. Dinko will not hesitate to make the wildest and most scurrilous form of accusation in order to attain personal notoriety. The truth of his charges does not concern him in the slightest.

8. Four other leaflets were identified at Mr. Dinko's deposition as Exhibits 1, 2, 10 and 12. They are attached here as Exhibits "45" through "48".

a. Exhibit "45" is entitled an "Open Letter to the NMU Membership", contains Mr. Dinko's name, address and telephone number and is signed by him. It was distributed to the membership by Mr. Dinko (p.53,95-6) after he read a copy and signed it (p.97, 98). Mr. Dinko maintains, however, that he did not write Exhibit "45" and does not know the names of the individuals who did prepare that leaflet. (p.96). As with each of the annexed leaflets that he has distributed, Mr. Dinko claims that Exhibit "45" was prepared by unknown individuals and delivered to him in large quantities (pp. 96-98, 117, 218, 220). This, despite the fact that these leaflets speak in the first person and describe Mr. Dinko's personal activities.

Although Mr. Dinko is obviously trying to avoid responsibility for the leaflets by claiming he doesn't know who prepared them, his admission that he read them and then distributed them to the membership is sufficient in itself to conclusively demonstrate his instability.

Exhibit "45" contains accusations against NMU officers and employees of criminal, unethical and immoral conduct. Mr. Dinko could support none of these charges. On each of the following charges he admitted he had no personal knowledge, that his information was based on hearsay from unknown individuals and



that he could not prove the charge:

1. That Milton Breit, the NMU Controller has a \$1,000 per month pad in Brooklyn which he pays for with union money (pp.103-4);

2. That Mr. Breit has prostitutes in the union building after hours and pays for them with union money (pp.104-5)

3. That President Shannon Wall purchased a million dollar yacht (pp.105-6);

4. That Vice-President James Martin holds half of "Panama's prime properties" (p.106);

5. That NMU officials "are cleaning out the NMU treasury" (p.106);

6. That the Premier of Japan asked the U.S government to throw NMU Out of Japan (p.107);

7. That Vice-President Pete Bocker took a \$100,000 pay-off from a factory owner to leave the factory without a union (p.107-108);

8. That Secretary-Treasurer Mel BARISIC is an ex-nazi sympathizer and collaborator (p.108-9).

The leaflet claims "If anyone does not believe I have the facts, I will be glad to play the recorded tapes of the conversations at the next membership meeting". Mr. Dinko admitted, however, that he had no such tapes and doesn't know whether they exist (p.110).

b. Exhibit "46" is primarily a cartoon depicting various NMU officials as animals. It also contains written accusations. Mr. Dinko has distributed the document and posted it on his mobile camper (p.117).

Exhibit "46" depicts Mr. Bocker holding a sign which states "Before I got my citizenship papers I didn't tell U.S. immigration that I was a member of the party". Mr. Dinko has no personal knowledge whether Mr. Bocker was a member of the communist party and conceded he could not prove the charge (pp.119-20)

Mr. Barisic is shown as a pig with swastikas on each lapel. Plaintiff has no personal knowledge of any connection between Barisic and the Nazis and "can't prove that or disprove it" (p.120).

Another union official, Al Zeidel, is portrayed sitting on a chair with a Star of David on his chair. Mr. Zeidel is Jewish and Mr. Dinko knows it (p.121). He claims, however, that he does not recognize the Star of David symbol (p.121-22).

Milton Breit is described as a "professional pimp". On this point Mr. Dinko testified, "It is hearsay. I can't disprove it or prove it." (p.123).

c. Exhibit "47" states that President Wall and Secretary Treasurer Barisic hate Jews and Blacks. Again Mr. Dinko testified "It is hearsay from members; I can't prove it or disprove it" (p.218). Nor did he ever make any effort to see whether the charge was true - "I didn't know I had to", testified Mr. Dinko (p.219).

d. Exhibit "48" is entitled "Special Bulletin" and is signed by Mr. Dinko. It was also distributed by Mr. Dinko and contains a large number of serious accusations and villifications. The charges regarding Milton Breit and prostitutes are repeated. There is a charge that Shannon Wall has lost \$30,000,000 of NMU pension money due to poor investments but Mr. Dinko can neither prove nor disprove the charge since it is "hearsay" from unknown members (p.222).



Here then is a marked pattern of Mr. Dinko distributing literature which purports to attribute inside information to him about all sorts of heinous activities being perpetrated by NMU officials and employees. When pressed, however, he is unable to substantiate any of his charges and even has the gall to try to deny responsibility for preparing the literature. It does not seem possible that such a man can be believed on any point where his credibility is called into question.

9. Mr. Dinko's affidavit in support of his motion to disqualify deponent's law firm correctly states that Mr. Freedman was a trustee of the NMU Officers' Pension Plan and resigned in December, 1974. Mr. Freedman is not a Trustee of the NMU Staff Pension Plan which is here under attack and has no personal interest in the outcome of this litigation. He is only sued in this action in his capacity as a stakeholder, along with Messrs. Segal and Karchmer. Mr. Segal has moved to dismiss the action against him since he is no longer a Trustee and can no longer be a "stakeholder". Mr. Freedman intends to make a similar motion.

10. At his deposition plaintiff testified that he has not been an active seaman since 1969 and, indeed, that he has not been employed since that date. He has found time to run for President of NMU on two occasions since 1969, the most recent occasion being 1973. He is not receiving welfare benefits from any source and claims to have been living on his "personal savings" since 1969.

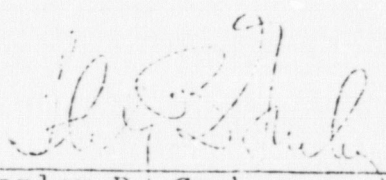
11. Article 21, Section 4(a) of the NMU Constitution provides that union officers who successfully defend themselves in litigation arising out of their activities as officers are entitled to be reimbursed by the union for counsel fees and expenses. This is in accord with the law of this Circuit. Thus,

if private counsel is required for defendant officers, the union will bear substantial costs if defendants are successful. The Union should not be put to this tremendous expense in a case as outrageous as the instant action.

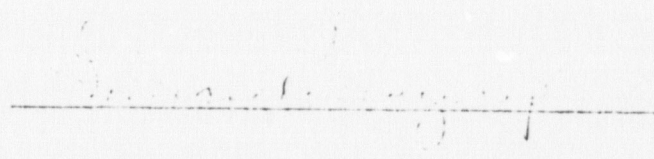
Deponent regrets the extreme length of this affidavit and the great bulk of exhibits attached hereto. However, it is essential to bring to the Court's attention that this case has absolutely no merit and should not have been permitted in the first instance. It would be unfortunate if the defendants and eventually the union are forced to pay for the costs of defending this action when the plaintiff's likelihood of success seems so remote.

There is more material contained in plaintiff's deposition which establishes his unreliable character and disdain for the truth. Deponent respectfully requests the Court to review the deposition in its entirety so that the full flavor of plaintiff's lack of credibility can be experienced.

WHEREFORE, deponent respectfully requests that plaintiff's motion to disqualify be denied and that the motion to dismiss be granted.

  
Stanley B. Gruber

Sworn to before me this  
28<sup>th</sup> day of May, 1975

  
NOTARY PUBLIC  
STATE OF NEW YORK  
COMMISSION EXPIRES  
JANUARY 1, 1977



STATE OF NEW YORK, COUNTY OF NEW YORK

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within  
found to be a true and complete copy. has been compared by the undersigned with the original and

Dated: .....

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is  
the attorney(s) of record for  
in the within action; that deponent has read the foregoing  
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein  
stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent  
further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: .....

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

INDIVIDUAL VERIFICATION

deponent is the  
read the foregoing  
the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and  
belief, and that as to those matters deponent believes it to be true.  
Sworn to before me, this day of 197 .....

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within  
upon in this action, at attorney(s) for

the address designated by said attorney(s) for that purpose  
by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official  
depository under the exclusive care and custody of the United States post office department within the State of New York.  
Sworn to before me, this day of 197 .....

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

AFFIDAVIT OF PERSONAL SERVICE

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 197 at No.  
upon deponent served the within  
the herein, by delivering a true copy thereof to h personally. Deponent knew the  
person so served to be the person mentioned and described in said papers as the therein.  
Sworn to before me, this day of 197 .....

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ANDY DINKO individually and on  
behalf of the members of the  
National Maritime Union of America

Plaintiff,

-against-

SHANNON J. WALL, as President of  
the National Maritime Union of  
America and individually, JOSEPH  
CURRAN, as past President of the  
National Maritime Union of America  
and individually, MEL BARISIC, as  
Secretary- Treasurer of the National  
Maritime Union of America and individually,  
PETER BOCKER, JAMES MARTIN and RICK MILLER,  
as Vice Presidents of the National Maritime  
Union of America and individually, ANDREW  
RICH, as New York Branch Agent of the  
National Maritime of America, ABRAHAM E.  
FREEDMAN, LEON KARCHMER and MARTIN E.  
SEGAL, as former Trustees of the National  
Maritime Union Officers' Pension Plan and  
individually, and the AMALGAMATED BANK OF  
NRE YORK, as Successor Trustee of the  
National Maritime Union Officers' Pension  
Plan and Trustee for the National Maritime  
Union Staff Pension Plan.

Defendants.  
-----X

STATE OF NEW YORK, )

) ss.:

COUNTY OF NEW YORK)

EDWARD O. HOWARD, being duly sworn, deposes and says:

1. I am a member of the firm of COVINGTON, HOWARD,  
HAGOOD & HOLLAND, attorneys for the plaintiff herein and, as  
such, I am familiar with the facts and circumstances in this  
action. I make this affidavit in reply to the affidavit and other  
papers submitted by the attorney for the defendant WALL and other  
defendants in opposition to plaintiff's motion for an order  
disqualifying ABRAHAM E. FREEDMAN as counsel for the defendants  
for whom he has appeared, and further, in opposition to the said  
papers insofar as they relate to a cross-motion by the said  
defendants to dismiss plaintiff's complaint.

AFFIDAVIT  
IN OPPOSITION

:75 CIV. 524 (HFW)

E



2. A review of the papers submitted by the said defendants necessarily leads to the conclusion that what is argued is essentially irrelevant to the basic issues presented before this Court. The affected defendants have submitted voluminous documentation in attempted support of their position. They have cited freely from the transcript of testimony given by the plaintiff at his examination before trial in this proceeding. They have argued at length with respect to that testimony. But the defendants have overlooked one basic fact and that is that the real issues presently before the Court, both on plaintiff's motion to disqualify and defendant's cross-motion, do not relate to plaintiff's credibility, nor his recollection, nor any leaflets or fliers which may have been disseminated in connection with the defendants' mal-administration as officers and agents of the NMU.

3. The basic issue presently before the Court is whether or not ABRAHAM E. FREEDMAN should be disqualified as counsel. This basic issue is not changed nor significantly affected by defendant's cross-motion to dismiss the complaint. Most of the issues raised by the defendants in the said cross-motion need not be determined at this state of the proceeding. As demonstrated in our Memorandum of Law submitted herewith, as well as our Memorandum of Law submitted in May in support of our motion to disqualify, plaintiff has clearly satisfied all relevant conditions prededent to the institution of this lawsuit and need not now attempt to answer in any evidentiary way the many evidentiary issues raised by the defendants' papers.

4. We need not set forth in detail herein the allegations of wrong-doing which have been made against the defendants in this action, as they are set forth in prior pleadings and proceedings before the Court. It is sufficient to note that the essence of these allegations is that the several defendants have

failed to comply with the relevant provisions of the Labor Management Reporting and Disclosure Act, that they have breached their fiduciary obligations to the Union and its membership and that they illegally adopted and attempted to implement a staff pension plan in substitution for a prior pension plan. Proof of these allegations is not dependent at all upon the credibility of, knowledge or recollection of the plaintiff. Plaintiff sues, in effect, in a representative capacity on behalf of the Union membership affected by the alleged wrong-doing of the defendants. Plaintiff's position here is analogous to that of a shareholder in a shareholders' derivative suit. It is essentially documentary evidence not ANDY DINKO's credibility which will determine the truth of the allegations in issue.

5. It is of little or no moment that many of the charges made in plaintiff's application for leave to commence this suit, and in his complaint, are alleged upon information and belief, rather than upon plaintiff's specific knowledge. It would be incredible, given the adversity existing between plaintiff and the defendants here, if plaintiff had been able to allege the material allegations upon his personal knowledge. It is noteworthy, in fact, that one reason why he was not able to do so was the fact that at all stages of the preliminary proceedings prior to plaintiff's application for leave to sue, the defendants denied to plaintiff the disclosure of information which, plaintiff alleges, they had and which he sought relevant to the facts in issue here. This is precisely the kind of vice which the Court in Tucker v. Shaw, 378 F.2d 304 (2d Cir., 1967) warned about and acted against (discussed more fully in our briefs submitted herewith). One of the basic and essential reasons why the courts have invariably disqualified house counsel or retained outside counsel in suits of this nature is that Union members who challenge the malfeasances and misfeasances of Union officers are at such a



disadvantage, as are their counsel, in having to battle against those who willfully withhold information, facts and data relevant to the issues. That is the circumstance here, we submit, with the defendant FREEDMAN representing so many of the defendants, including himself, while also being general counsel for the NMU.

6. Much of the affidavit submitted in support of the defendants' cross-motion to dismiss and in opposition to our motion to disqualify (hereinafter "the Gruber Affidavit") is directed to an attempted refutation of the material allegations of the complaint. Much of this sort of thing is purportedly developed through references to the testimony of the plaintiff given at his deposition. We submit again, that it is not necessary on this motion for us to attempt to refute the arguments advanced in the Gruber Affidavit in attempted support of the defendants' position. In fact, the law on this point is precisely to the contrary, as is more fully set forth in our memorandums.

7. The defendants here are attempting to try the case through the Gruber Affidavit and exhibits or, at the very least, attempting to have the matter treated as a motion for summary judgment. Neither is permissible here. The standard to which this Court must look at this stage of the proceedings is whether or not there is a sufficient basis for disqualification of ABRAHAM E. FREEDMAN as counsel for the several defendants named for whom he appears. It is not the function of this Court, at this point, to attempt to weigh and judge the evidence which will later be offered by plaintiff in his representative capacity in support of his allegations. It is not necessary, on this motion, for the Court to attempt to weigh and judge the evidence in terms of credibility, sufficiency, weight, or whatever. The relevant standards in deciding defendants' cross-motion to dismiss the complaint are that this complaint is to be weighed from the point of view of indulging every favorable inference which can reasonably obtain in support of sustaining the complaint and if it is possible that

the relevant and material allegations can be sustained at trial, then a motion to dismiss must be denied. In addition, both plaintiff's motion to disqualify and the defendant's cross-motion must be decided within the context of the nature of this suit and the fact that in an action such as this, it is virtually mandatory, on the relevant law, that ABRAHAM E. FREEDMAN be disqualified as counsel. In the absence of an imperative defense by the relevant defendants- statute of limitations, non-membership in a union, res judicata, and the like - none of which are presented by the defendant here, a cross-motion to dismiss must be denied and the motion to disqualify granted.

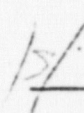
8. It is not necessary, we submit, for us to comment on alleged accusations which the plaintiff may have made against several of the individual defendants in pamphlets, etc.. We do not condone some of the perhaps strong accusations made. Nor, however, do we have any obligation on this motion to defend them. To the extent that the Gruber Affidavit deals with personal accusations which may have been made against any of the defendants, those accusations and Mr. Gruber's reference to them should be irrelevant here. We trust that this Court will not be misled into relating to those allegations and accusations. In effect, they have nothing to do with the lawsuit.

9. If the Court is inclined to accord any substance to the arguments set forth in the Gruber Affidavit or any materiality on this motion to the several exhibits submitted along with the Gruber Affidavit, then we submit that an evidentiary hearing should be convened specifically to deal with the sole question of whether or not sufficient good cause has been shown to warrant the institution and maintenance of this action. After perusal of many of these exhibits submitted by the defendants, we submit, further, that at such a hearing, the defendants should be required to produce the several individuals who, in other ports, purport to

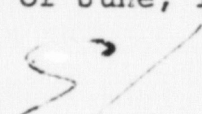



have related to and dealt with the vote on the Staff Pension Plan which is at the nub of this lawsuit. We do not think that such an evidentiary hearing is really necessary here at this point. But, we do suggest that if the Court is at all inclined to accord any materiality to the exhibits, that such a hearing should be convened.

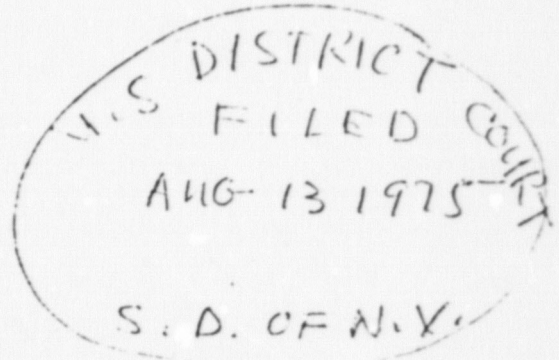
10. In essence, however, it is clear on the law that the only relief that should properly be accorded by the Court at this point is to grant plaintiff's motion to disqualify ABRAHAM FREEDMAN, while denying the cross-motion to dismiss the complaint.

  
EDWARD O. HOWARD

Sworn to before me this  
23rd day of June, 1975

  
\_\_\_\_\_  
NOTARY PUBLIC

ANN J. CALLIS  
Notary Public, State of New York  
No. 24-5578925  
Qualified in Kings County  
Commission Expires March 30, 1977 



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANDY DINKO, individually and  
on behalf of the members of  
the National Maritime Union  
of America,

Plaintiff,

v.

SHANNON J. WALL, et al.,

Defendants.

75 Civ. 524 (HFW)

JUDGMENT

This cause having come on to be heard on the motion of defendants WALL, CURRAN, BARISIC, BOCKER, MARTIN, MILLER, RICH and FREEDMAN to dismiss the complaint on the ground that the Court lacks jurisdiction over the subject matter of the action, and the Court having granted the said motion by Order dated August 4, 1975, it is hereby

ORDERED, ADJUDGED and DECREED that the complaint herein be and the same is hereby dismissed and that the moving defendants have and recover their costs from the plaintiff.

Dated: New York, New York  
August , 1975

15/  
Clerk

RAYMOND BURGHIARDI



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANDY DINKO individually and on behalf of the members of the National Maritime Union of America,

Plaintiff,

- against -

SHANNON J. WALL, as President of the National Maritime Union of America and individually, JOSEPH CURRAN, as past President of the National Maritime Union of America and individually, MEL BARISIC, as Secretary-Treasurer of the National Maritime Union of America and individually, PETER BOCKER, JAMES MARTIN and RICK MILLER, as Vice Presidents of the National Maritime Union of America and individually, ANDREW RICH, as New York Branch Agent of the National Maritime of America, ABRAHAM E. FREEDMAN, LEON KARCHMER and MARTIN E. SEGAL, as former Trustees of the National Maritime Union Officers' Pension Plan and individually, and The AMALGAMATED BANK OF NEW YORK, as Successor Trustee of the National Maritime Union Officers' Pension Plan and Trustee for the National Maritime Union Staff Pension Plan,

Defendants.

MEMORANDUM DECISION

75 Civ. 524 (HFW)

# 42928

HENRY F. WERKER, D. J.

Defendants have moved for an order pursuant to Rule 12(b) of the Federal Rules of Civil Procedure dismissing the complaint on the ground that the court lacks jurisdiction over the subject matter. Plaintiff brought this action

and on behalf of the members of the National Maritime Union (hereinafter referred to as the NMU) under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 501. Defendant Wall is president of the NMU; defendant Curran is a past president of the NMU; defendant Barisic is the secretary-treasurer of the NMU; defendants Bocker, Martin and Miller are vice presidents of the NMU; defendant Rich is the New York Branch Agent of the NMU; defendants Freedman, Karchmer and Segal were trustees of the National Maritime Union Officer's Pension Plan.

Plaintiff alleges that the defendants committed certain wrongful acts which constitute a violation of their fiduciary duties and responsibilities under the Act, 29 U.S.C. § 501(a). The alleged violations can be broken down to three categories:

1. Allegations relating to the adoption by the Union of the NMU staff pension plan;
2. Allegations that the defendant officers have refused to make certain financial and membership data available to plaintiff and other members; and
3. Allegations that the defendant officers have misappropriated union funds.

Plaintiff, pursuant to section 501(b), made an application to the court to bring this action and was granted leave to commence, ex parte, by Judge Frankel on January 27, 1975. The instant motion for an order dismissing the complaint is granted, without prejudice to the plaintiff.



the reasons discussed herein.

There are three prerequisites to the bringing of a suit with leave of the court under section 501(b): First, the member plaintiff must request the union to "sue or recover damages or secure an accounting or other appropriate relief"; second, the union or its governing board or officers must refuse or fail to sue; and third, a showing of "good cause must be made;" 29 U.S.C. § 501(b); Levinson v. Perry, 71 L.R.B.M. 2554 (1969); Philips v. Osborn, 403 F.2d 826 (1968); Purcell v. Keane, 277 F. Supp. 252 (1967); Penuelas v. Moreno, 198 F. Supp. 441 (1961).

As to the first two requirements, the section clearly refers to a failure or refusal to bring a court action after a request has been made that such action be brought. Four matters, each separated by the word "or" are mentioned after the words "refuse or fail" in section 501(b):

1. to sue or
2. recover damages, or
3. secure an accounting or
4. other appropriate relief

1. and 2. obviously refer to court action only. The statutory language "sue or recover" has been construed to mean "sue to recover, Cassidy v. Horan, 405 F.2d 230 (1968); Pensco v. Daley, 239 F. Supp. 629 (1965), pointing out that both the House and Senate reports referred to section 501(b) as being worded "to recover." 4. "other appropriate relief" is a standard well known legal term referring to court action. 3. "secure an accounting or" may be ambiguous. Read with 1. and 2.

it follows, it refers to court relief granting an accounting, Penueles v. Moreno, 198 F. Supp. 441 (1961). It follows that a demand must be made by the plaintiff requesting that the union or its governing board or officers take court action to secure the relief referred to in 1., 2., 3., or 4. above.

The request requirement is mandatory and cannot be satisfied "by anything short of an actual request. An allegation of the futility of such a request will not suffice," Coleman v. Brotherhood of Railway & Steamship Clerks, etc., 340 F.2d 206 (1965). Therefore, the request requirement is a condition precedent to a derivative suit under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 501(b), Horner v. Ferron, 362 F.2d 224 (1966).

As observed in Johnson v. San Diego and Bartenders Union, Local 500, 190 F. Supp. 444, federal district courts are courts of limited jurisdiction:

The United States District Courts are creatures of statutes enacted in pursuant of the Constitution, and are courts of limited jurisdiction. They have no jurisdiction other than that conferred by acts of Congress within the limits defined by the Constitution.

In support of this proposition the court cited Kline v. Burke, Construction Co., 260 U.S. 226 (1922), 43 S. Ct. 79, in which the Supreme Court declared that, other than itself, every federal court derived its authority wholly from Congress. The Supreme Court has maintained this position. In Healy v. Ratta, 292 U.S. 263 (1933), 54 S. Ct. 700, the court invoked



Kline in concluding that Congress has followed a policy of narrowing federal court jurisdiction, thus requiring strict construction of any statute in which such jurisdiction was allegedly conferred. Section 501 of the Labor-Management Recording and Disclosure Act is such a statute.

With these fundamentals in mind, we turn to the facts in the instant case. The papers before this court show that the sole step taken by the plaintiff, which might be viewed as satisfying the request requirement of section 501(b), consisted of a letter dated December 17 written by the plaintiff to Mr. Barasiq, Secretary-Treasurer of the NMU. After setting forth a number of violations of fiduciary duties on the part of the defendants and demanding that the vote on the revised pension plan be declared void the plaintiff concluded with the following:

I demand a complete accounting of all union expenditures including the officers staff pension plan and all benefits associated therewith. In addition I further demand a true and accurate accounting of all officers and staff, who are participating recipients in this plan; as well as monies expended or allocated for each individual; family benefits and health benefits, etc.

I further demand that an outside independent certified public accountant be selected to audit all expenditures of the NMU; and a membership committee be set up including outside impartial observers to see that members will be protected against the continuous misappropriation of Union Funds.

I demand that no monies be used out of the NMU General Treasury for the Officers Staff Pension Plan . . . . .

If you do not reply within ten (10) days from the above date, I will immediately

instruct my attorneys to proceed with law suits in the Federal Courts.

The above made demands by the plaintiff are clearly directed at the officers of the NMU and are intended to bring about action by them. Law suits are threatened if the demands are not met.

Nowhere in the letter of December 17 does the plaintiff request that the officers of the NMU initiate court action to achieve the demands made by him.

In Levinson v. Perry, supra, another case involving alleged violations of fiduciary duties by officers of the NMU, the plaintiff sent a letter to the secretary-treasurer of the NMU stating the alleged charges and demanding that the NMU "fully and immediately inquire into the charges and act accordingly." In that letter the requested inquiry and undefined action to be based thereon went beyond the naked demands made by the plaintiff in this case. Nevertheless, the court found that the letter in the Levinson case was not sufficient to satisfy the procedural request requirement of section 501(b), stating:

Plaintiff's demand that NMU 'fully and immediately inquire into the above charges and act accordingly' is not a request that the union bring suit . . . . Rather, the only allegation is that a demand was made of the union for an inquiry into the alleged violations of fiduciary duties.

The words 'act accordingly' in plaintiff's letter are broad enough to encompass a number of forms of action other than, and short of court proceedings . . . . We find plaintiff has failed to comply with the request requirement prerequisite to suit under section 501(b).



Accordingly, defendant's motion is granted.  
The complaint is dismissed."

I regard the plaintiff's request in the instant case to be considerably weaker (in terms of satisfying the procedural requirements of section 501(b)) than the one rejected in Levinson v. Perry. Therefore, I find the plaintiff to have failed to comply with the request requirement prerequisite to suit under section 501(b).

In addition to the requirement heretofore discussed the plaintiff in an action under section 501(b) in the Federal Courts must show "good cause." There is nothing in the section which defines "good cause" nor can the section be read as meaning that the requirement of good cause is satisfied merely by the demand for court action referred to above, Penuelas v. Moreno, supra. "Good cause" must therefore mean something in addition to the demand and refusal. Generally, it has been concluded that "good cause rests in the sound discretion of the court. Highway Truck Drivers and Helpers Local 107 v. Cohen, 182 F. Supp. 608 (1960); Executive Board Local Union No. 28, I.B.E.W. v. I.B.E.W., 184 F. Supp. 649 (1960).

Judge Frankel's January 27, 1975 ex parte order granting plaintiff leave to commence this action was made subsequent to submission of a verified application and affidavit. Until the filing of the May 28, 1975 Notice of Motion to Dismiss and Affidavit in support thereof defendant had not had an opportunity to challenge the propriety of the charges raised by plaintiff in his application, and

and complaint. Thus, Judge Frankel did not have the benefit of reading the plaintiff's deposition, or the exhibits attached to the defendant's motion papers in exercising his discretion as to the "good cause shown" requirement of section 501(b).

Like any other ex parte order, an order granting leave to commence an action must be subject to being vacated upon appropriate opposition. In Penuelas v. Moreno, supra, the court stated:

The showing of good cause may be made ex parte. By hornbook law any order made ex parte may be set aside either ex parte or on motion.

The court concludes that no good cause has been shown and that the ex parte order should not have been issued."

The affidavit of Stanley B. Gruber, submitted, inter alia, in support of the defendants motion to dismiss challenges the showing of "good cause" for each charge of wrongdoing raised by the complaint. This court has had the benefit of the numerous detailed exhibits attached to the above mentioned-affidavit, particularly the deposition of the plaintiff, in evaluating the challenges to the plaintiff's showing of "good cause." After a careful examination of all the papers submitted by the parties I am compelled to conclude that an adequate showing of "good cause" has not been made by the plaintiff as required by section 501(b) and that the ex parte order should be vacated.

I concur with opinion expressed by Judge Carter in Penuelas v. Moreno, supra, that the better practice in cases such as this will be to require an adversary proceeding



before permitting an action under section 501(b) to be filed. Such a procedure would serve to insure that the procedural requirements of section 501(b) have been met and thereby avoid the unnecessary expenditure of the parties' and the court's time.

As discussed herein, the order granting leave to commence this action is vacated. Accordingly, this court lacks jurisdiction over the subject matter of the instant action and the motion to dismiss the complaint is granted without prejudice to plaintiff in bringing a new action once the procedural requirements of sections 501(b) have been fully complied with.

SO ORDERED.

Dated: New York, New York

August 4, 1975

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U. S. D. J.

NOTES

1. 29 U.S.C. § 501(a): "The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision, in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy."
2. 29 U.S.C. § 501(b): "(b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allow a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for



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any expenses necessarily paid or incurred by him in connection with the litigation. "

by Robin J. Elliott  
DATE: 10-10-75 LIMA N.Y.C.  
2:05 P.M.



COPY RECEIVED

DATE: October 10, 1975

TIME: 1:50 P.M.

SZOLD. PRES. MAN

Attorneys for The Amalgamated Bank

By M. A. Holl

Service of a copy of the  
within *matter* is hereby admitted  
Date: *10/10/75* Time: *1 10*

ABRAHAM E. FREEDMAN

*Luz*